

# **ATTACHMENT D**

**VIRGINIA BOARD OF FUNERAL DIRECTORS & EMBALMERS  
JUSISPRUDENCE EXAMINATION  
RFP NO. FDE-2005-14**

**CODE OF VIRGINIA**  
**AS IT RELATES TO REGULATORY BOARDS**

**Chapter 1**  
**Chapter 24.1**  
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**Chapter 54.1**

# **CHAPTER 1**

# Code of Virginia

## Regulation of Professions and Occupations

### Chapter 1 of Title 54.1

§ 54.1-100. Regulations of professions and occupations.

The right of every person to engage in any lawful profession, trade or occupation of his choice is clearly protected by both the Constitution of the United States and the Constitution of the Commonwealth of Virginia. The Commonwealth cannot abridge such rights except as a reasonable exercise of its police powers when it is clearly found that such abridgment is necessary for the preservation of the health, safety and welfare of the public.

No regulation shall be imposed upon any profession or occupation except for the exclusive purpose of protecting the public interest when:

1. The unregulated practice of the profession or occupation can harm or endanger the health, safety or welfare of the public, and the potential for harm is recognizable and not remote or dependent upon tenuous argument;
2. The practice of the profession or occupation has inherent qualities peculiar to it that distinguish it from ordinary work and labor;
3. The practice of the profession or occupation requires specialized skill or training and the public needs, and will benefit by, assurances of initial and continuing professional and occupational ability; and
4. The public is not effectively protected by other means.

No regulation of a profession or occupation shall conflict with the Constitution of the United States, the Constitution of Virginia, the laws of the United States, or the laws of the Commonwealth of Virginia. Periodically and at least annually, all agencies regulating a profession or occupation shall review such regulations to ensure that no conflict exists.

(1979, c. 408, § 54-1.17; 1988, c. 765.)

§ 54.1-100.1. Department of Commerce continued as Department of Professional and Occupational Regulation.

The Department of Professional and Occupational Regulation, formerly known as the Department of Commerce, is continued, and wherever "Department of Commerce" is used in this Code, it shall mean the Department of Professional and Occupational Regulation. The Board for Professional and Occupational Regulation, formerly known as the Board of Commerce, is continued, and wherever "Board of Commerce" is used in this Code, it shall mean the Board for Professional and Occupational Regulation.

(1993, c. 499.)

§ 54.1-101. Copies of examinations filed by regulatory boards.

A copy of examinations given by regulatory and advisory boards within the Department of Professional and Occupational Regulation and the Department of Health Professions authorized to conduct examinations of applicants for admission to practice or pursue any profession, vocation, trade, calling, or art shall be kept on file at the office of the secretary of each board. A copy of the examination shall be placed on file within ten days after it is administered, and shall be preserved for at least one year as a public record accessible to any person desiring to examine it during usual business hours. After the expiration of one year from the time the examination is filed, the secretary of the respective board may withdraw and destroy the examination. However, this section shall not be construed or interpreted in a manner to require the filing or release of examinations or other information which would result in compromising the validity or security of future examinations conducted by regulatory or advisory boards of the Department of Professional and Occupational Regulation or the Department of Health Professions. In the event any provision of this section results in a conflict with the provisions of § 54.1-108, the provisions of § 54.1-108 shall prevail.

(Code 1950, § 54-1; 1952, c. 227; 1959, Ex. Sess., c. 94; 1960, c. 10; 1962, c. 13; 1970, c. 623; 1973, c. 284; 1985, c. 448; 1988, c. 765; 1993, c. 499.)

§ 54.1-102. Unlawful procurement of certificate, license or permit; unauthorized possession of examination or answers; penalty.

A. It shall be unlawful:

1. For any person to procure, or assist another to procure, through theft, fraud or other illegal means, a certificate, license or permit, from any state board, or other body charged by law with the responsibility of examining persons desiring to engage in a regulated business or profession, by giving to, or receiving from, any person any information, oral, written or printed, during the administration of the examination, which is intended to, or will, assist any person taking the examination in passing the examination and obtaining the required certificate, license or permit;
2. For any person, other than a member or officer of the board or body, to procure or have in his possession prior to the beginning of an examination, without written authority of a member or officer of the board or body, any question intended to be used by the board or body conducting the examination, or to receive or furnish to any person taking the examination, prior to or during the examination, any written or printed material purporting to be answers to, or aid in answering such questions;
3. For any person to attempt to procure, through theft, fraud or other illegal means, any questions intended to be used by the board or body conducting the examination, or the answers to the questions;
4. To promise or offer any valuable or other consideration to a person having access to the questions or answers as an inducement to procure for delivery to the promisor, or any other person, a copy or copies of any questions or answers.

If an examination is divided into separate parts, each of the parts shall be deemed an examination for the purposes of this section.

B. Any person violating the provisions of subsection A shall be guilty of a Class 2 misdemeanor.

(Code 1950, §§ 54-1.1, 54-1.2; 1988, c. 765.)

§ 54.1-103. Additional training of regulated persons; reciprocity; endorsement.

A. The regulatory boards within the Department of Professional and Occupational Regulation and the Department of Health Professions may promulgate regulations specifying additional training or conditions for individuals seeking certification or licensure, or for the renewal of certificates or licenses.

B. The regulatory boards may enter into agreements with other jurisdictions for the recognition of certificates and licenses issued by other jurisdictions.

C. The regulatory boards are authorized to promulgate regulations recognizing licenses or certificates issued by other states, the District of Columbia, or any territory or possession of the United States as full or partial fulfillment of qualifications for licensure or certification in the Commonwealth.

(1979, c. 408, § 54-1.28; 1983, c. 569; 1988, c. 765; 1990, c. 194; 1993, c. 499.)

§ 54.1-104. Suspension of license, certificate, registration, or authority for dishonor of fee payment; reinstatement.

The Department of Professional and Occupational Regulation and the Department of Health Professions may suspend the license, certificate, registration or authority it has issued any person who submits a check, money draft or similar instrument for payment of a fee required by statute or regulation which is not honored by the bank or financial institution named. The suspension shall become effective ten days following delivery by certified mail of written notice of the dishonor and the impending suspension to such person's address. Upon notification of suspension, the person may reinstate the license, certificate, registration or authority upon payment of the fee and penalties required under statute or regulation. Suspension under this provision shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq.).

(1980, c. 433, § 54-1.2:1; 1988, c. 765; 1993, c. 499.)

§ 54.1-105. Majority of board or panel required to suspend or revoke license, certificate, registration, or multistate licensure privilege; imposition of sanctions.

An affirmative vote of a majority of those serving on a board who are qualified to vote or those serving on a panel of a health regulatory board convened pursuant to § 54.1-2400 shall be required for any action to suspend or revoke a license, certification, registration, or multistate licensure privilege to practice nursing or to impose a sanction on a licensee. However, an affirmative vote of

a majority of a quorum of the regulatory board shall be sufficient for summary suspension pursuant to specific statutory authority.

(1988, c. 765; 1992, c. 659; 2004, c. 49.)

§ 54.1-106. Health care professionals rendering services to patients of certain clinics exempt from liability.

A. No person who is licensed or certified by the Boards of/for Audiology and Speech-Language Pathology; Counseling; Dentistry; Medicine; Nursing; Optometry; Opticians; Pharmacy; Hearing Aid Specialists; Psychology; or Social Work or who holds a multistate licensure privilege to practice nursing issued by the Board of Nursing who renders at any site any health care services within the limits of his license, certification or licensure privilege, voluntarily and without compensation, to any patient of any clinic which is organized in whole or in part for the delivery of health care services without charge, shall be liable for any civil damages for any act or omission resulting from the rendering of such services unless the act or omission was the result of his gross negligence or willful misconduct.

For purposes of this section, any commissioned or contract medical officers or dentists serving on active duty in the United States armed services and assigned to duty as practicing commissioned or contract medical officers or dentists at any military hospital or medical facility owned and operated by the United States government shall be deemed to be licensed pursuant to this title.

B. For the purposes of Article 5 (§ 2.2-1832 et seq.) of Chapter 18 of Title 2.2, any person rendering such health care services who (i) is registered with the Division of Risk Management and (ii) has no legal or financial interest in the clinic from which the patient is referred shall be deemed an agent of the Commonwealth and to be acting in an authorized governmental capacity with respect to delivery of such health care services. The premium for coverage of such person under the Risk Management Plan shall be paid by the Department of Health.

C. For the purposes of this section and Article 5 (§ 2.2-1832 et seq.) of Chapter 18 of Title 2.2, "delivery of health care services without charge" shall be deemed to include the delivery of dental, medical or other health services when a reasonable minimum fee is charged to cover administrative costs.

(1983, c. 25, § 54-1.2:2; 1988, c. 765; 1989, c. 159; 1992, cc. 414, 706; 1995, cc. 509, 531; 1996, c. 748; 1999, c. 834; 2000, cc. 473, 618, 632; 2004, c. 49.)

§ 54.1-107. Appointments, terms and removal of members of regulatory boards; citizen members.

All members of regulatory boards shall be citizens of the United States and residents of Virginia. Members shall be appointed by the Governor and may be removed by him as provided in subsection B of § 2.2-108. Any vacancy occurring other than by expiration of terms shall be filled for the unexpired term. Members shall hold office after expiration of their terms until their successors are duly appointed and have qualified. Appointment to fill an unexpired term shall not be considered a full term. All members of regulatory boards appointed by the Governor for terms commencing on or

after July 1, 1988, shall be appointed for terms of four years. No member shall serve more than two successive full terms on any regulatory board.

A "citizen member" of a regulatory board shall be a person who (i) is not by training or experience a practitioner of the profession or occupation regulated by the board, (ii) is not the spouse, parent, child, or sibling of such a practitioner, and (iii) has no direct or indirect financial interest, except as a consumer, in the practice of the profession or occupation regulated by the board.

The provisions of this section shall not apply to the Board for Branch Pilots.

(1981, c. 447, § 54-1.18:1; 1988, cc. 42, 765.)

#### § 54.1-108. Disclosure of official records.

Official records of the Department of Professional and Occupational Regulation or the Department of Health Professions or any board named in this title shall be subject to the disclosure provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.), except for the following:

1. Examination questions, papers, booklets and answer sheets, which may be disclosed at the discretion of the board administering or causing to be administered such examinations.
2. Applications for admission to examinations or for licensure, and the scoring records maintained by any board or by the Departments on individual licensees or applicants. However, this material may be made available during normal working hours for copying by the subject individual at his expense at the office of the Department or board which possesses the material.
3. Records of active investigations being conducted by the Departments or any board.

(1979, c. 408, § 54-1.41; 1982, c. 207; 1988, c. 765; 1993, c. 499.)

#### § 54.1-109. Reviews and appeals.

Any person who has been aggrieved by any action of the Department of Professional and Occupational Regulation, Department of Health Professions, Board for Professional and Occupational Regulation, Board of Health Professions, any regulatory board within the Departments or any panel of a health regulatory board convened pursuant to § 54.1-2400 shall be entitled to a review of such action. Appeals from such actions shall be in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

(1979, c. 408, § 54-1.19; 1988, c. 765; 1992, c. 659; 1993, c. 499.)

#### § 54.1-110. Presiding officer; participation of board in hearing; disqualification of board member.

A. Every hearing in a contested case shall be conducted in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.). When a hearing officer presides, the regulatory board shall determine whether the hearing officer is to hear the case alone or with a panel of a



health regulatory board convened pursuant to § 54.1-2400 or whether the board is to hear the case with the hearing officer.

B. A board member shall disqualify himself and withdraw from any case in which he cannot accord fair and impartial consideration. Any party may request the disqualification of any board member by stating with particularity the grounds upon which it is claimed that fair and impartial consideration cannot be accorded. The remaining members of the board or panel shall determine whether the individual should be disqualified.

(1979, c. 408, § 54-1.37; 1986, c. 615; 1988, c. 765; 1992, c. 659.)

§ 54.1-111. Unlawful acts; prosecution; proceedings in equity; civil penalty.

A. It shall be unlawful for any person, partnership, corporation or other entity to engage in any of the following acts:

1. Practicing a profession or occupation without holding a valid license as required by statute or regulation.
2. Making use of any designation provided by statute or regulation to denote a standard of professional or occupational competence without being duly certified or licensed.
3. Making use of any titles, words, letters or abbreviations which may reasonably be confused with a designation provided by statute or regulation to denote a standard of professional or occupational competence without being duly certified or licensed.
4. Performing any act or function which is restricted by statute or regulation to persons holding a professional or occupational license or certification, without being duly certified or licensed.
5. Failing to register as a practitioner of a profession or occupation as required by statute or regulation.
6. Materially misrepresenting facts in an application for licensure, certification or registration.
7. Willfully refusing to furnish a regulatory board information or records required or requested pursuant to statute or regulation.
8. Violating any statute or regulation governing the practice of any profession or occupation regulated pursuant to this title.
9. Refusing to process a request, tendered in accordance with the regulations of the relevant health regulatory board or applicable statutory law, for patient records or prescription dispensing records after the closing of a business or professional practice or the transfer of ownership of a business or professional practice.

Any person who willfully engages in any unlawful act enumerated in this section shall be guilty of a Class 1 misdemeanor. The third or any subsequent conviction for violating this section during a 36-month period shall constitute a Class 6 felony.

B. In addition to the criminal penalties provided for in subsection A, the Department of Professional and Occupational Regulation or the Department of Health Professions, without compliance with the Administrative Process Act (§ 2.2-4000 et seq.), shall have the authority to enforce the provisions of subsection A and may institute proceedings in equity to enjoin any person, partnership, corporation or any other entity from engaging in any unlawful act enumerated in this section and to recover a civil penalty of at least \$200 but not more than \$5,000 per violation, with each unlawful act constituting a separate violation; but in no event shall the civil penalties against any one person, partnership, corporation or other entity exceed \$25,000 per year. Such proceedings shall be brought in the name of the Commonwealth by the appropriate Department in the circuit court or general district court of the city or county in which the unlawful act occurred or in which the defendant resides.

C. This section shall not be construed to prohibit or prevent the owner of patient records from (i) retaining copies of his patient records or prescription dispensing records after the closing of a business or professional practice or the transfer of ownership of a business or professional practice or (ii) charging a reasonable fee, not in excess of the amounts authorized in § 8.01-413, for copies of patient records.

D. This section shall apply, mutatis mutandis, to all persons holding a multistate licensure privilege to practice nursing in the Commonwealth of Virginia.

(1979, c. 408, § 54-1.20; 1988, c. 765; 1993, cc. 129, 499; 1998, c. 470; 2001, c. 544; 2003, cc. 753, 762; 2004, c. 49.)

#### § 54.1-112. Copies of records as evidence.

Copies of all records, documents and other papers of the Department of Professional and Occupational Regulation and the Department of Health Professions and their regulatory boards which bear the official seal and which are duly certified and authenticated in writing on the face of such documents to be true copies by the custodian thereof and by the person to whom the custodian reports shall be received as evidence with like effect as the original records, documents or other papers in all courts of the Commonwealth.

(1988, c. 765; 1993, c. 499.)

#### § 54.1-113. Regulatory boards to adjust fees.

Following the close of any biennium, when the account for any regulatory board within the Department of Professional and Occupational Regulation or the Department of Health Professions maintained under § 54.1-308 or §/n 54.1-2505 shows expenses allocated to it for the past biennium to be more than ten percent greater or less than moneys collected on behalf of the board, it shall revise the fees levied by it for certification or licensure and renewal thereof so that the fees are sufficient but not excessive to cover expenses.

(1981, c. 558, § 54-1.28:1; 1988, c. 765; 1993, c. 499.)

§ 54.1-114. Biennial report.

The Board of Bar Examiners, the Department of Professional and Occupational Regulation and the Department of Health Professions shall submit biennial reports to the Governor and General Assembly on or before November 1 of each even-numbered year. The biennial report shall contain at a minimum the following information for the Board of Bar Examiners and for each board within the two Departments: (i) a summary of the board's fiscal affairs, (ii) a description of the board's activities, (iii) statistical information regarding the administrative hearings and decisions of the board, (iv) a general summary of all complaints received against licensees and the procedures used to resolve the complaints, and (v) a description of any action taken by the board designed to increase public awareness of board operations and to facilitate public participation. The Department of Health Professions shall include, in those portions of its report relating to the Board of Medicine, a compilation of the data required by § 54.1-2910.1.

(1985, c. 537, § 54-1.2:3; 1988, c. 765; 1993, c. 499; 1998, c. 744; 2004, c. 650.)

§ 54.1-115. .

Expired.

§ 54.1-116. Applicants to include social security numbers, or other identifying number; exemption.

A. Every applicant for a license, certificate, registration or other authorization to engage in a business, trade, profession or occupation issued by the Commonwealth pursuant to this title, and every applicant for renewal thereof, shall provide on the application either his social security number or control number issued by the Department of Motor Vehicles pursuant to §/n 46.2-342. An initial application or renewal application which does not include either identifying number shall not be considered or acted upon by the issuing entity, and no refund of any fees paid with the application shall be granted.

B. Notwithstanding the provisions of subsection A, a health regulatory board of the Department of Health Professions may issue a temporary license or authorization to practice, effective for not longer than 90 days, to an otherwise qualified applicant for a license, certificate or registration who is a foreign national and cannot provide a social security number or control number at the time of application.

(1997, cc. 794, 898; 2003, c. 803.)

§ 54.1-117. Expiration of documents issued to persons in service in the armed services of the United States.

Notwithstanding any contrary provision of law, any license, permit, certificate, or other document, however styled or denominated, that is related to the practice of any business, profession, or calling and issued under this title to any citizen of the Commonwealth shall be held not to have expired during the period of such person's service outside the United States, in the armed services of the

United States or as a member of the diplomatic service of the United States, appointed under the Foreign Service Act of 1946, serving outside the United States and 60 days thereafter. However, no extension granted under this section shall exceed five years from the date of expiration of the document.

For the purposes of this section "service in the armed services of the United States" includes active duty service with the regular Armed Forces of the United States or the National Guard or other reserve component.

(2004, c. 975.)

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Virginia Board of Funeral Directors and Embalmers  
Study Material  
Revised 10/04

## **CHAPTER 24.1**

# Code of Virginia

## Chapter 24.1 Practitioner Self-Referral Act.

### § 54.1-2410. Definitions.

As used in this chapter or when referring to the Board of Health Professions regulatory authority therefor, unless the context requires a different meaning:

"Board" means the Board of Health Professions.

"Community" means a city or a county.

"Demonstrated need" means (i) there is no facility in the community providing similar services and (ii) alternative financing is not available for the facility, or (iii) such other conditions as may be established by Board regulation.

"Entity" means any person, partnership, firm, corporation, or other business, including assisted living facilities as defined in § 63.2-100, that delivers health services.

"Group practice" means two or more health care practitioners who are members of the same legally organized partnership, professional corporation, not-for-profit corporation, faculty practice or similar association in which (i) each member provides substantially the full range of services within his licensed or certified scope of practice at the same location as the other members through the use of the organization's office space, facilities, equipment, or personnel; (ii) payments for services received from a member are treated as receipts of the organization; and (iii) the overhead expenses and income from the practice are distributed according to methods previously determined by the members.

"Health services" means any procedures or services related to prevention, diagnosis, treatment, and care rendered by a health care worker, regardless of whether the worker is regulated by the Commonwealth.

"Immediate family member" means the individual's spouse, child, child's spouse, stepchild, stepchild's spouse, grandchild, grandchild's spouse, parent, stepparent, parent-in-law, or sibling.

"Investment interest" means the ownership or holding of an equity or debt security, including, but not limited to, shares of stock in a corporation, interests or units of a partnership, bonds, debentures, notes, or other equity or debt instruments, except investment interests in a hospital licensed pursuant to Article 1 (§ 32.1-123 et seq.) of Chapter 5 of Title 32.1.

"Investor" means an individual or entity directly or indirectly possessing a legal or beneficial ownership interest, including an investment interest.

"Office practice" means the facility or facilities at which a practitioner, on an ongoing basis, provides or supervises the provision of health services to consumers.

"Practitioner" means any individual certified or licensed by any of the health regulatory boards within the Department of Health Professions, except individuals regulated by the Board of Funeral Directors and Embalmers or the Board of Veterinary Medicine.

"Referral" means to send or direct a patient for health services to another health care practitioner or entity outside the referring practitioner's group practice or office practice or to establish a plan of care which requires the provision of any health services outside the referring practitioner's group practice or office practice.

(1993, c. 869; 2000, c. 201.)

**§ 54.1-2411. Prohibited referrals and payments; exceptions.**

A. Unless the practitioner directly provides health services within the entity and will be personally involved with the provision of care to the referred patient, or has been granted an exception by the Board or satisfies the provisions of subsection D of this section, a practitioner shall not refer a patient for health services to an entity outside the practitioner's office or group practice if the practitioner or any of the practitioner's immediate family members is an investor in such entity.

B. The Board may grant an exception to the prohibitions in this chapter, and may permit a practitioner to invest in and refer to an entity, regardless of whether the practitioner provides direct services within such entity, if there is a demonstrated need in the community for the entity and all of the following conditions are met:

1. Individuals other than practitioners are afforded a bona fide opportunity to invest in the entity on the same and equal terms as those offered to any referring practitioner;
2. No investor-practitioner is required or encouraged to refer patients to the entity or otherwise generate business as a condition of becoming or remaining an investor;
3. The services of the entity are marketed and furnished to practitioner-investors and other investors on the same and equal terms;
4. The entity does not issue loans or guarantee any loans for practitioners who are in a position to refer patients to such entity;
5. The income on the practitioner's investment is based on the practitioner's equity interest in the entity and is not tied to referral volumes; and
6. The investment contract between the entity and the practitioner does not include any covenant or clause limiting or preventing the practitioner's investment in other entities.

Unless the Board, the practitioner, or entity requests a hearing, the Board shall determine whether to grant or deny an exception within ninety days of the receipt of a written request from the

practitioner or entity, stating the facts of the particular circumstances and certifying compliance with the conditions required by this subsection. The Board's decision shall be a final administrative decision and shall be subject to judicial review pursuant to the Administrative Process Act (§ 2.2-4000 et seq.).

C. When an exception is granted pursuant to subsection B:

1. The practitioner shall disclose his investment interest in the entity to the patient at the time of referral. If alternative entities are reasonably available, the practitioner shall provide the patient with a list of such alternative entities and shall inform the patient of the option to use an alternative entity. The practitioner shall also inform the patient that choosing another entity will not affect his treatment or care;

2. Information on the practitioner's investment shall be provided if requested by any third party payor;

3. The entity shall establish and utilize an internal utilization review program to ensure that practitioner-investors are engaging in appropriate and necessary utilization; and

4. In the event of a conflict of interests between the practitioner's ownership interests and the best interests of any patient, the practitioner shall not make a referral to such entity, but shall make alternative arrangements for the referral.

D. Further, a practitioner may refer patients for health services to a publicly traded entity in which such practitioner has an investment interest, without applying for or receiving an exception from the Board, if all of the following conditions are met:

1. The entity's stock is listed for trading on the New York Stock Exchange or the American Stock Exchange or is a national market system security traded under an automated interdealer quotation system operated by the National Association of Securities Dealers;

2. The entity had, at the end of the corporation's most recent fiscal year, total net assets of at least \$50,000,000 related to the furnishing of health services;

3. The entity markets and furnishes its services to practitioner-investors and other practitioners on the same and equal terms;

4. All stock of the entity, including the stock of any predecessor privately held company, is one class without preferential treatment as to status or remuneration;

5. The entity does not issue loans or guarantee any loans for practitioners who are in a position to refer patients to such entity;

6. The income on the practitioner's investment is not tied to referral volumes and is based on the practitioner's equity interest in the entity; and



7. The practitioner's investment interest does not exceed one half of one percent of the entity's total equity.

(1993, c. 869.)

**§ 54.1-2412. Board to administer; powers and duties of Board; penalties for violation.**

A. In addition to its other powers and duties, the Board of Health Professions shall administer the provisions of this chapter.

B. The Board shall promulgate, pursuant to the Administrative Process Act (§ 2.2-4000 et seq.), regulations to:

1. Establish standards, procedures, and criteria which are reasonable and necessary for the effective administration of this chapter;
2. Establish standards, procedures, and criteria for determining compliance with, exceptions to, and violations of the provisions of § 54.1-2411;
3. Establish standards, procedures, and criteria for advising practitioners and entities of the applicability of this chapter to activities and investments;
4. Levy and collect fees for processing requests for exceptions from the prohibitions set forth in this chapter and for authorization to make referrals pursuant to subsection B of § 54.1-2411;
5. Establish standards, procedures, and criteria for review and referral to the appropriate health regulatory board of all reports of investigations of alleged violations of this chapter by practitioners and for investigations and determinations of violations of this chapter by entities;
6. Establish standards, procedures, and criteria for granting exceptions from the prohibitions set forth in this chapter; and
7. Establish such other regulations as may reasonably be needed to administer this chapter.

C. Upon a determination of a violation by the Board, pursuant to the Administrative Process Act, any entity, other than a practitioner, that presents or causes to be presented a bill or claim for services that the entity knows or has reason to know is prohibited by § 54.1-2411 shall be subject to a monetary penalty of no more than \$20,000 per referral, bill, or claim. The monetary penalty may be sued for and recovered in the name of the Commonwealth. All such monetary penalties shall be deposited in the Literary Fund.

D. Any violation of this chapter by a practitioner shall constitute grounds for disciplinary action as unprofessional conduct by the appropriate health regulatory board within the Department of Health Professions. Sanctions for violation of this chapter may include, but are not limited to, the monetary penalty authorized in § 54.1-2401.

(1993, c. 869.)

**§ 54.1-2413. Additional conditions related to practitioner-investors.**

A. No hospital licensed in this Commonwealth shall discriminate against or otherwise penalize any practitioner for compliance with the provisions of this chapter.

B. No practitioner, other health care worker, or entity shall enter into any agreement, arrangement, or scheme intended to evade the provisions of this chapter by inducing patient referrals in a manner which would be prohibited by this chapter if the practitioner made the referrals directly.

C. No group practice shall be formed for the purpose of facilitating referrals that would otherwise be prohibited by this chapter.

D. Notwithstanding the provisions of this chapter, a practitioner may refer a patient who is a member of a health maintenance organization to an entity in which the practitioner is an investor if the referral is made pursuant to a contract with the health maintenance organization.

(1993, c. 869.)

**§ 54.1-2414. Applicability of chapter; grace period for compliance.**

This chapter shall apply, in the case of any investment interest acquired after February 1, 1993, to referrals for health services made by a practitioner on or after July 1, 1993. However, in the case of any investment interest acquired prior to February 1, 1993, compliance with the provisions of this chapter is required by July 1, 1996.

(1993, c. 869.)

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Virginia Board of Funeral Directors and Embalmers  
Study Material  
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## **CHAPTER 25**

## Code of Virginia

### Department of Health Professions Chapter 25 of Title 54.1

#### § 54.1-2500. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Board" means the Board of Health Professions.

"Department" means the Department of Health Professions.

"Director" means the Director of the Department of Health Professions.

"Health regulatory board" or "regulatory board" means any board included within the Department of Health Professions as provided in § 54.1-2503.

(1977, c. 579, § 54-950; 1980, c. 678; 1983, c. 115; 1985, c. 448; 1986, c. 564; 1987, c. 686; 1988, c. 765.)

#### § 54.1-2501. Department established.

The Department of Health Professions established within the executive branch, shall be under the supervision and management of the Director of the Department.

(1977, c. 579, § 54-950.1; 1984, c. 720; 1986, c. 564; 1988, c. 765.)

#### § 54.1-2502. Use of consultants in investigations.

The Department of Health Professions shall establish a roster of consultants in health care specialties for each health regulatory board, as required. The Department shall contract with each consultant to assist in the investigation and evaluation of violations of statute or regulations of the health regulatory boards and to provide expert testimony as necessary in any subsequent administrative hearing. The cost of the consultants shall be paid by the board for which the services are provided.

Any consultant under contract to the Department shall have immunity from civil liability resulting from any communication, finding, opinion or conclusion made in the course of his duties unless such person acted in bad faith or with malicious intent.

(1986, c. 564, § 54-960.1; 1988, c. 765.)

#### § 54.1-2503. Boards within Department.

In addition to the Board of Health Professions, the following boards are included within the Department: Board of Audiology and Speech-Language Pathology, Board of Counseling, Board of

Dentistry, Board of Funeral Directors and Embalmers, Board of Medicine, Board of Nursing, Board of Nursing Home Administrators, Board of Optometry, Board of Pharmacy, Board of Physical Therapy, Board of Psychology, Board of Social Work and Board of Veterinary Medicine.

(1977, c. 579, § 54-950.2; 1980, c. 678; 1983, c. 115; 1987, c. 686; 1988, c. 765; 1992, cc. 706, 841; 1993, c. 869; 2000, cc. 473, 688.)

#### § 54.1-2504. Appointment of Director.

The Director of the Department of Health Professions shall be appointed by the Governor, subject to confirmation by the General Assembly, to serve at the pleasure of the Governor.

(1986, c. 564, § 54-954.1; 1988, c. 765.)

#### § 54.1-2505. Powers and duties of Director of Department.

The Director of the Department shall have the following powers and duties:

1. To supervise and manage the Department;
2. To perform or consolidate such administrative services or functions as may assist the operation of the boards;
3. To prepare, approve and submit to the Governor, after consultation with the boards, all requests for appropriations and be responsible for all expenditures pursuant to appropriations;
4. To provide such office facilities as will allow the boards to carry out their duties;
5. To employ personnel as required for the proper performance of the responsibilities of the Department subject to Chapter 29 (§ 2.2-2900 et seq.) of Title 2.2 within the limits of appropriations made by law;
6. To receive all complaints made against regulated health care professionals;
7. To develop administrative policies and procedures governing the receipt and recording of complaints;
8. To monitor the status of actions taken under the auspices of the boards regarding complaints until the closure of each case;
9. To provide investigative and such other services as needed by the boards to enforce their respective statutes and regulations;
10. To provide staff to assist in the performance of the duties of the Board of Health Professions;
11. To collect and account for all fees to be paid into each board and account for and deposit the moneys so collected into a special fund from which the expenses of the regulatory boards, the

Health Practitioners' Intervention Program, and the Department and Board of Health Professions shall be paid;

12. To make and enter into all contracts and agreements necessary or incidental to the performance of his duties and the execution of his powers, including, but not limited to, contracts with the United States, other states, agencies and governmental subdivisions of the Commonwealth;

13. To accept grants from the United States government, its agencies and instrumentalities, and any other source. The Director shall have the power to comply with conditions and execute agreements as may be necessary, convenient or desirable;

14. To promulgate and revise regulations necessary for the administration of the Department and such regulations as are necessary for the implementation of the Health Practitioners' Intervention Program pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of this title and subdivision 19 of this section;

15. To report promptly, after consultation with the presiding officer of the appropriate health regulatory board or his designee, to the Attorney General or the appropriate attorney for the Commonwealth any information the Department obtains which, upon appropriate investigation, indicates, in the judgment of the Director, that a person licensed by any of the health regulatory boards has violated any provision of criminal law, including the laws relating to manufacturing, distributing, dispensing, prescribing or administering drugs other than drugs classified as Schedule VI drugs. When necessary, the Attorney General or the attorney for the Commonwealth shall request that the Department of Health Professions or the Department of State Police conduct any subsequent investigation of such report. Upon request and affidavit from an attorney for the Commonwealth, the Director shall provide documents material to a criminal investigation of a person licensed by a health regulatory board; however, peer review documents shall not be released and shall remain privileged pursuant to § 8.01-581.17. For the purpose of this section, the terms manufacturing, distributing, dispensing, prescribing or administering drugs shall not include minor administrative or clerical errors which do not affect the inventory of drugs required by Chapter 34 (§/n 54.1-3400 et seq.) of this title and do not indicate a pattern of criminal behavior;

16. To keep records of the names and qualifications of registered, certified or licensed persons;

17. To exercise other powers and perform other duties required of the Director by the Governor;

18. To issue subpoenas in accordance with the Administrative Process Act (§/n 2.2-4000 et seq.) for any informal fact finding or formal proceeding within the jurisdiction of the Department or any regulatory board;

19. To establish, and revise as necessary, a comprehensive health practitioners' intervention program pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of this title;

20. To establish, and revise as necessary, with such federal funds, grants, or general funds as may be appropriated or made available for this program, the Prescription Monitoring Program pursuant to Chapter 25.2 (§ 54.1-2519 et seq.) of this title; and

21. To assess a civil penalty against any person who is not licensed by a health regulatory board for failing to report a violation pursuant to §/n 54.1-2400.6 or § 54.1-2909.

(1977, c. 579, § 54-955; 1980, c. 678; 1983, c. 528; 1986, c. 564; 1988, cc. 266, 765; 1997, c. 439; 2002, c. 481; 2003, cc. 753, 762; 2004, c. 64.)

§ 54.1-2506. Enforcement of laws by Director and investigative personnel; authority of investigative personnel and Director.

A. The Director and investigative personnel appointed by him shall be sworn to enforce the statutes and regulations pertaining to the Department, the Board, and the health regulatory boards and shall have the authority to investigate any violations of those statutes and regulations and to the extent otherwise authorized by law inspect any office or facility operated, owned or employing individuals regulated by any health regulatory board. The Director or his designee shall have the power to subpoena witnesses and issue subpoenas requiring the production of patient records, business records, papers, and physical or other evidence in the course of any investigation.

B. All investigative personnel shall be vested with the authority to (i) administer oaths or affirmations for the purpose of receiving complaints of violations of this subtitle, (ii) serve and execute any warrant, paper or process issued by any court or magistrate, the Board, the Director or in his absence a designated subordinate, or by any regulatory board under the authority of the Director, and (iii) request and receive criminal history information under the provisions of § 19.2-389.

C. The Director shall have the authority to issue summonses for violations of statutes and regulations governing the unlicensed practice of professions regulated by the Department. The Director may delegate such authority to investigators appointed by him. In the event a person issued such a summons fails or refuses to discontinue the unlawful acts or refuses to give a written promise to appear at the time and place specified in the summons, the investigator may appear before a magistrate or other issuing authority having jurisdiction to obtain a criminal warrant pursuant to § 19.2-72.

(1980, c. 678, § 54-960; 1986, c. 564; 1988, c. 765; 1993, c. 869; 2003, cc. 753, 762.)

§ 54.1-2506.01. Investigation of reported violations.

The Department shall investigate all complaints that are within the jurisdiction of the relevant health regulatory board received from (i) the general public and (ii) all reports received pursuant to §§ 54.1-2400.6, 54.1-2400.7, 54.1-2709.3, 54.1-2709.4, 54.1-2908, or § 54.1-2909.

(2003, cc. 753, 762; 2004, c. 64.)

§ 54.1-2506.1. Submission of required information.

A. The Department is authorized to require individuals applying for initial licensure and individuals who are licensed to practice medicine, osteopathic medicine, dentistry, or to practice as a physician assistant, nurse practitioner or dental hygienist, to provide information in addition to that which is

required to determine the individual's qualifications to be licensed. Such additional information shall identify the individual's specialty and subspecialty; credentials and certifications issued by professional associations, institutions and boards; and locations of practice and number of hours spent practicing at each practice location. Such information shall be collected and maintained by the Department for manpower planning purposes in cooperation with agencies and institutions of the Commonwealth and shall be released by the Department only in the aggregate without reference to any licensee's name or other individual identifying particulars. Prior to collecting any information described in this section from individual licensees, the Department shall first attempt to obtain from other sources information sufficient for manpower planning purposes.

B. For the purpose of expediting the dissemination of information about a public health emergency, the Department is authorized to require certain licensed, certified or registered persons to report any email address, telephone number and facsimile number that may be used to contact such person in the event of a public health emergency. Such email addresses, telephone numbers and facsimile numbers shall not be published, released or made available for any other purpose. The Director, in consultation with the Department of Health and the Department of Emergency Management, shall adopt regulations that identify those licensed, certified or registered persons to which the requirement to report shall apply and the procedures for reporting.

(1994, c. 853; 1997, c. 806; 2003, c. 602.)

§ 54.1-2506.2. Protection of escrow funds, etc., held by persons licensed by any of the health regulatory boards.

Whenever funds are held in escrow, in trust, or in some other fiduciary capacity by a person licensed by any of the health regulatory boards and the Director or investigative personnel appointed by him have reason to believe that such person is not able or is unwilling to adequately protect such funds or the interest of any person therein, the Director may file a petition with any court of record having equity jurisdiction over such person or any of the funds held by such person stating the facts upon which he relies. The court may temporarily enjoin further activity by such person and take such further action as shall be necessary to conserve, protect and disburse the funds involved, including the appointment of a receiver. If a receiver is appointed his expenses and a reasonable fee as determined by the court shall be paid by such person.

(1995, c. 738.)

§ 54.1-2507. Board of Health Professions; membership, appointments, and terms of office.

The Board of Health Professions shall consist of one member from each health regulatory board appointed by the Governor, and five members to be appointed by the Governor from the Commonwealth at large. No member of the Board of Health Professions who represents a health regulatory board shall serve as such after he ceases to be a member of a board. The members appointed by the Governor shall be subject to confirmation by the General Assembly and shall serve for four-year terms.

(1977, c. 579, § 54-951; 1985, c. 448; 1986, c. 564; 1988, c. 765.)



§ 54.1-2508. Chairman; meetings of Board; quorum.

The chairman of the Board of Health Professions shall be elected by the Board from its members. The Board shall meet at least once quarterly and may hold additional meetings as necessary to perform its duties. A majority of the Board shall constitute a quorum for the conduct of business.

(1977, c. 579, § 54-953; 1980, c. 678; 1986, c. 564; 1988, c. 765.)

§ 54.1-2509. Reimbursement of Board members for expenses.

All members of the Board shall be compensated in accordance with § 2.2-2813 from the funds of the Department.

(1977, c. 579, § 54-954; 1980, cc. 678, 728; 1986, c. 564; 1988, c. 765.)

§ 54.1-2510. Powers and duties of Board of Health Professions.

The Board of Health Professions shall have the following powers and duties:

1. To evaluate the need for coordination among the health regulatory boards and their staffs and report its findings and recommendations to the Director and the boards;
2. To evaluate all health care professions and occupations in the Commonwealth, including those regulated and those not regulated by other provisions of this title, to consider whether each such profession or occupation should be regulated and the degree of regulation to be imposed. Whenever the Board determines that the public interest requires that a health care profession or occupation which is not regulated by law should be regulated, the Board shall recommend to the General Assembly a regulatory system to establish the appropriate degree of regulation;
3. To review and comment on the budget for the Department;
4. To provide a means of citizen access to the Department;
5. To provide a means of publicizing the policies and programs of the Department in order to educate the public and elicit public support for Department activities;
6. To monitor the policies and activities of the Department, serve as a forum for resolving conflicts among the health regulatory boards and between the health regulatory boards and the Department and have access to departmental information;
7. To advise the Governor, the General Assembly and the Director on matters relating to the regulation or deregulation of health care professions and occupations;
8. To make bylaws for the government of the Board of Health Professions and the proper fulfillment of its duties under this chapter;

9. To promote the development of standards to evaluate the competency of the professions and occupations represented on the Board;
10. To review and comment, as it deems appropriate, on all regulations promulgated or proposed for issuance by the health regulatory boards under the auspices of the Department. At least one member of the relevant board shall be invited to be present during any comments by the Board on proposed board regulations;
11. To review periodically the investigatory, disciplinary and enforcement processes of the Department and the individual boards to ensure the protection of the public and the fair and equitable treatment of health professionals;
12. To examine scope of practice conflicts involving regulated and unregulated professions and advise the health regulatory boards and the General Assembly of the nature and degree of such conflicts;
13. To receive, review, and forward to the appropriate health regulatory board any departmental investigative reports relating to complaints of violations by practitioners of Chapter 24.1 (§ 54.1-2410 et seq.) of this subtitle;
14. To determine compliance with and violations of and grant exceptions to the prohibitions set forth in Chapter 24.1 of this subtitle; and
15. To take appropriate actions against entities, other than practitioners, for violations of Chapter 24.1 of this subtitle.

(1977, c. 579, § 54-955.1; 1980, c. 678; 1984, cc. 447, 720, 734; 1986, c. 564; 1988, c. 765; 1993, c. 869.)

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Virginia Board of Funeral Directors and Embalmers  
Study Material  
Revised 10/04

## **CHAPTER 54.1**

## Code of Virginia

§ 54.1-2400. General powers and duties of health regulatory boards.

The general powers and duties of health regulatory boards shall be:

1. To establish the qualifications for registration, certification, licensure or the issuance of a multistate licensure privilege in accordance with the applicable law which are necessary to ensure competence and integrity to engage in the regulated professions.
2. To examine or cause to be examined applicants for certification or licensure. Unless otherwise required by law, examinations shall be administered in writing or shall be a demonstration of manual skills.
3. To register, certify, license or issue a multistate licensure privilege to qualified applicants as practitioners of the particular profession or professions regulated by such board.
4. To establish schedules for renewals of registration, certification, licensure, and the issuance of a multistate licensure privilege.
5. To levy and collect fees for application processing, examination, registration, certification or licensure or the issuance of a multistate licensure privilege and renewal that are sufficient to cover all expenses for the administration and operation of the Department of Health Professions, the Board of Health Professions and the health regulatory boards.
6. To promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 (§ 54.1-100 et seq.) and Chapter 25 (§ 54.1-2500 et seq.) of this title.
7. To revoke, suspend, restrict, or refuse to issue or renew a registration, certificate, license or multistate licensure privilege which such board has authority to issue for causes enumerated in applicable law and regulations.
8. To appoint designees from their membership or immediate staff to coordinate with the Intervention Program Committee and to implement, as is necessary, the provisions of Chapter 25.1 (§ 54.1-2515 et seq.) of this title. Each health regulatory board shall appoint one such designee.
9. To take appropriate disciplinary action for violations of applicable law and regulations.
10. To appoint a special conference committee, composed of not less than two members of a health regulatory board or, when required for special conference committees of the Board of Medicine, not less than two members of the Board and one member of the relevant advisory board, to act in accordance with §/n 2.2-4019 upon receipt of information that a practitioner of the appropriate board may be subject to disciplinary action. The special conference committee may (i) exonerate the practitioner; (ii) reinstate the practitioner; (iii) place the practitioner on probation with such terms as it may deem appropriate; (iv) reprimand the practitioner; (v) modify a previous order; and (vi)

impose a monetary penalty pursuant to § 54.1-2401. The order of the special conference committee shall become final 30 days after service of the order unless a written request to the board for a hearing is received within such time. If service of the decision to a party is accomplished by mail, three days shall be added to the 30-day period. Upon receiving a timely written request for a hearing, the board or a panel of the board shall then proceed with a hearing as provided in § 2.2-4020, and the action of the committee shall be vacated. This subdivision shall not be construed to limit the authority of a board to delegate to an appropriately qualified agency subordinate, as defined in § 2.2-4001, the authority to conduct informal fact-finding proceedings in accordance with § 2.2-4019, upon receipt of information that a practitioner may be subject to a disciplinary action. Criteria for the appointment of an agency subordinate shall be set forth in regulations adopted by the board.

11. To convene, at their discretion, a panel consisting of at least five board members or, if a quorum of the board is less than five members, consisting of a quorum of the members to conduct formal proceedings pursuant to § 2.2-4020, decide the case, and issue a final agency case decision. Any decision rendered by majority vote of such panel shall have the same effect as if made by the full board and shall be subject to court review in accordance with the Administrative Process Act. No member who participates in an informal proceeding conducted in accordance with § 2.2-4019 shall serve on a panel conducting formal proceedings pursuant to § 2.2-4020 to consider the same matter.

12. To issue inactive licenses or certificates and promulgate regulations to carry out such purpose. Such regulations shall include, but not be limited to, the qualifications, renewal fees, and conditions for reactivation of licenses or certificates.

13. To meet by telephone conference call to consider settlement proposals in matters pending before special conference committees convened pursuant to this section, or matters referred for formal proceedings pursuant to §/n 2.2-4020 to a health regulatory board or a panel of the board or to consider modifications of previously issued board orders when such considerations have been requested by either of the parties.

14. To request and accept from a certified, registered or licensed practitioner or person holding a multistate licensure privilege to practice nursing, in lieu of disciplinary action, a confidential consent agreement. A confidential consent agreement shall be subject to the confidentiality provisions of § 54.1-2400.2 and shall not be disclosed by a practitioner. A confidential consent agreement shall include findings of fact and may include an admission or a finding of a violation. A confidential consent agreement shall not be considered either a notice or order of any health regulatory board, but it may be considered by a board in future disciplinary proceedings. A confidential consent agreement shall be entered into only in cases involving minor misconduct where there is little or no injury to a patient or the public and little likelihood of repetition by the practitioner. A board shall not enter into a confidential consent agreement if there is probable cause to believe the practitioner has (i) demonstrated gross negligence or intentional misconduct in the care of patients or (ii) conducted his practice in such a manner as to be a danger to the health and welfare of his patients or the public. A certified, registered or licensed practitioner who has entered into two confidential consent agreements involving a standard of care violation, within the 10-year period immediately preceding a board's receipt of the most recent report or complaint being considered, shall receive public discipline for any subsequent violation within the 10-year period

unless the board finds there are sufficient facts and circumstances to rebut the presumption that the disciplinary action be made public.

15. When a board has probable cause to believe a practitioner is unable to practice with reasonable skill and safety to patients because of excessive use of alcohol or drugs or physical or mental illness, the board, after preliminary investigation by an informal fact-finding proceeding, may direct that the practitioner submit to a mental or physical examination. Failure to submit to the examination shall constitute grounds for disciplinary action. Any practitioner affected by this subsection shall be afforded reasonable opportunity to demonstrate that he is competent to practice with reasonable skill and safety to patients. For the purposes of this subdivision, "practitioner" shall include any person holding a multistate licensure privilege to practice nursing.

(1988, c. 765; 1992, cc. 659, 890; 1997, cc. 439, 564; 1998, c. 469; 2002, cc. 455, 698; 2003, cc. 753, 762; 2004, cc. 49, 64.)

§ 54.1-2400.01. Certain definition.

As used in this subtitle, "laser surgery" means treatment through revision, destruction, incision or other structural alteration of human tissue using laser technology. Under this definition, the continued use of laser technology solely for nonsurgical purposes of examination and diagnosis shall be permitted for those professions whose licenses permit such use.

(1997, c. 569.)

§ 54.1-2400.02. Information concerning health professionals; posting of addresses on the Internet.

In order to protect the privacy and security of health professionals, the posting of addresses to the on-line licensure lookup or any successor in interest thereof shall only disclose the city or county provided to the Department and shall not include any street, rural delivery route, or post office address. However, the street address of facilities regulated by the Boards of Funeral Directors and Embalmers, Nursing, Pharmacy, and Veterinary Medicine shall be posted.

(2003, c. 310.)

§ 54.1-2400.1. Mental health service providers; duty to protect third parties; immunity.

A. As used in this section:

"Certified substance abuse counselor" means a person certified to provide substance abuse counseling in a state-approved public or private substance abuse program or facility.

"Client" or "patient" means any person who is voluntarily or involuntarily receiving mental health services or substance abuse services from any mental health service provider.

"Clinical psychologist" means a person who practices clinical psychology as defined in § 54.1-3600.

"Clinical social worker" means a person who practices social work as defined in § 54.1-3700.

"Licensed practical nurse" means a person licensed to practice practical nursing as defined in § 54.1-3000.

"Licensed substance abuse treatment practitioner" means any person licensed to engage in the practice of substance abuse treatment as defined in §/n 54.1-3500.

"Marriage and family therapist" means a person licensed to engage in the practice of marriage and family therapy as defined in § 54.1-3500.

"Mental health professional" means a person who by education and experience is professionally qualified and licensed in Virginia to provide counseling interventions designed to facilitate an individual's achievement of human development goals and remediate mental, emotional, or behavioral disorders and associated distresses which interfere with mental health and development.

"Mental health service provider" or "provider" refers to any of the following: (i) a person who provides professional services as a certified substance abuse counselor, clinical psychologist, clinical social worker, licensed substance abuse treatment practitioner, licensed practical nurse, marriage and family therapist, mental health professional, physician, professional counselor, psychologist, registered nurse, school psychologist, or social worker; (ii) a professional corporation, all of whose shareholders or members are so licensed; or (iii) a partnership, all of whose partners are so licensed.

"Professional counselor" means a person who practices counseling as defined in § 54.1-3500.

"Psychologist" means a person who practices psychology as defined in §/n 54.1-3600.

"Registered nurse" means a person licensed to practice professional nursing as defined in § 54.1-3000.

"School psychologist" means a person who practices school psychology as defined in § 54.1-3600.

"Social worker" means a person who practices social work as defined in §/n 54.1-3700.

B. A mental health service provider has a duty to take precautions to protect third parties from violent behavior or other serious harm only when the client has orally, in writing, or via sign language, communicated to the provider a specific and immediate threat to cause serious bodily injury or death to an identified or readily identifiable person or persons, if the provider reasonably believes, or should believe according to the standards of his profession, that the client has the intent and ability to carry out that threat immediately or imminently. If the third party is a child, in addition to taking precautions to protect the child from the behaviors in the above types of threats, the provider also has a duty to take precautions to protect the child if the client threatens to engage in behaviors that would constitute physical abuse or sexual abuse as defined in § 18.2-67.10. The duty to protect does not attach unless the threat has been communicated to the provider by the threatening client while the provider is engaged in his professional duties.

C. The duty set forth in subsection B is discharged by a mental health service provider who takes one or more of the following actions:

1. Seeks civil commitment of the client under Chapter 2 (§ 37.1-63 et seq.) of Title 37.1.
2. Makes reasonable attempts to warn the potential victims or the parent or guardian of the potential victim if the potential victim is under the age of eighteen.
3. Makes reasonable efforts to notify a law-enforcement official having jurisdiction in the client's or potential victim's place of residence or place of work, or place of work of the parent or guardian if the potential victim is under age eighteen, or both.
4. Takes steps reasonably available to the provider to prevent the client from using physical violence or other means of harm to others until the appropriate law-enforcement agency can be summoned and takes custody of the client.
5. Provides therapy or counseling to the client or patient in the session in which the threat has been communicated until the mental health service provider reasonably believes that the client no longer has the intent or the ability to carry out the threat.

D. A mental health service provider shall not be held civilly liable to any person for:

1. Breaching confidentiality with the limited purpose of protecting third parties by communicating the threats described in subsection B made by his clients to potential third party victims or law-enforcement agencies or by taking any of the actions specified in subsection C.
2. Failing to predict, in the absence of a threat described in subsection B, that the client would cause the third party serious physical harm.
3. Failing to take precautions other than those enumerated in subsection C to protect a potential third party victim from the client's violent behavior.

(1994, c. 958; 1997, c. 901.)

§ 54.1-2400.2. Confidentiality of information obtained during an investigation or disciplinary proceeding.

A. Any reports, information or records received and maintained by any health regulatory board in connection with possible disciplinary proceedings, including any material received or developed by a board during an investigation or proceeding, shall be strictly confidential. A board may only disclose such confidential information:

1. In a disciplinary proceeding before a board or in any subsequent trial or appeal of an action or order, or to the respondent in entering into a confidential consent agreement under § 54.1-2400;



2. To regulatory authorities concerned with granting, limiting or denying licenses, certificates or registrations to practice a health profession, including the coordinated licensure information system, as defined in §/n 54.1-3030;

3. To hospital committees concerned with granting, limiting or denying hospital privileges if a final determination regarding a violation has been made;

4. Pursuant to an order of a court of competent jurisdiction for good cause arising from extraordinary circumstances being shown;

5. To qualified personnel for bona fide research or educational purposes, if personally identifiable information relating to any person is first deleted. Such release shall be made pursuant to a written agreement to ensure compliance with this section; or

6. To the Health Practitioners' Intervention Program within the Department of Health Professions in connection with health practitioners who apply to or participate in the Program.

B. In no event shall confidential information received, maintained or developed by any board, or disclosed by the board to others, pursuant to this section, be available for discovery or court subpoena or introduced into evidence in any civil action. This section shall not, however, be construed to inhibit an investigation or prosecution under Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2.

C. Any claim of a physician-patient or practitioner-patient privilege shall not prevail in any investigation or proceeding by any health regulatory board acting within the scope of its authority. The disclosure, however, of any information pursuant to this provision shall not be deemed a waiver of such privilege in any other proceeding.

D. This section shall not prohibit the Director of the Department of Health Professions, after consultation with the relevant health regulatory board president or his designee, from disclosing to the Attorney General, or the appropriate attorney for the Commonwealth, investigatory information which indicates a possible violation of any provision of criminal law, including the laws relating to the manufacture, distribution, dispensing, prescribing or administration of drugs, other than drugs classified as Schedule VI drugs and devices, by any individual regulated by any health regulatory board.

E. This section shall not prohibit the Director of the Department of Health Professions from disclosing matters listed in subdivision A 1, A 2, or A 3 of § 54.1-2909; from making the reports of aggregate information and summaries required by § 54.1-2400.3; or from disclosing the information required to be made available to the public pursuant to § 54.1-2910.1.

F. Orders and notices of the health regulatory boards relating to disciplinary actions shall be disclosed.

G. Any person found guilty of the unlawful disclosure of confidential information possessed by a health regulatory board shall be guilty of a Class 1 misdemeanor.

(1997, c. 698; 1998, c. 744; 1999, c. 888; 2003, cc. 753, 762; 2004, c. 49.)

§ 54.1-2400.3. Disciplinary actions to be reported.

In addition to the information required by § 54.1-114, the Director shall include in the Department's biennial report for each of the health regulatory boards the number of reports or complaints of misconduct received and the investigations, charges, findings, and sanctions resulting therefrom. The report shall reflect the categories of allegations, kinds of complaints and the rates of disciplinary activity for the various regulated professions and the health regulatory boards having jurisdiction; summaries explaining the reported data shall be included with the report. Further, the report shall specify the number of cases for each profession regulated by a health regulatory board by category of violation, including, but not limited to, standard of care violations, in which (i) a sanction was imposed; (ii) a confidential consent agreement was accepted; and (iii) more than two confidential consent agreements involving a standard of care violation were accepted by the relevant board for the same practitioner in a 10-year period. The information shall be reported only in the aggregate without reference to any individual's name or identifying particulars. In those portions of this report relating to the Board of Medicine, the Director shall include a summary of the data required by § 54.1-2910.1.

The Director shall also include in the Department's biennial report for each health regulatory board (i) case processing time standards for resolving disciplinary cases, (ii) an analysis of the percentage of cases resolved during the last two fiscal years that did not meet such standards, (iii) a six-year trend analysis of the time required to process, investigate, and adjudicate cases, and (iv) a detailed reporting of staffing levels for the six-year period for each job classification that supports the disciplinary process. However, the initial biennial report shall require a four-year trend analysis of the time required to process, investigate, and adjudicate cases and a detailed reporting of staffing levels for the four-year period for each job classification that supports the disciplinary process.

(1997, c. 698; 1998, c. 744; 2003, cc. 753, 762.)

§ 54.1-2400.4. Mental health service providers duty to inform; immunity; civil penalty.

A. Any mental health service provider, as defined in § 54.1-2400.1, shall, upon learning of evidence that indicates a reasonable probability that another mental health provider is or may be guilty of a violation of standards of conduct as defined in statute or regulation, advise his patient of his right to report such misconduct to the Department of Health Professions, hereinafter referred to as the "Department."

B. The mental health service provider shall provide relevant information to the patient, including, but not limited to, the Department's toll-free complaint hotline number for consumer complaints and written information, published by the Department of Health Professions, explaining how to file a report. The mental health service provider shall document in the patient's record the alleged misconduct, the category of licensure or certification, and approximate dates of treatment, if known, of the mental health service provider who will be the subject of the report, and the action taken by the mental health service provider to inform the patient of his right to file a complaint with the Department of Health Professions.

C. Any mental health service provider informing a patient of his right to file a complaint against a regulated person and providing the information required by this section shall be immune from any civil liability or criminal prosecution resulting therefrom unless such person acted in bad faith or with malicious intent.

D. Notwithstanding any other provision of law, any person required to inform a patient of his right to file a complaint against a regulated person pursuant to this section who fails to do so shall be subject to a civil penalty not to exceed \$100.

(2000, c. 578.)

§ 54.1-2400.5. Suspension of license, certificate, registration or other authorization issued by a health regulatory board upon delinquency; procedure; reinstatement.

A. An obligee may notify an obligor who is alleged to be in default or delinquent in the payment of a federal- or state-guaranteed educational loan or work-conditional scholarship or work-conditional grant that (i) the obligor has 30 days from the date of receipt of the notice to pay the alleged delinquency or to reach an agreement with the obligee to pay such delinquency and (ii) if payment is not made or an agreement cannot be reached within that time, a petition will be filed by the obligee seeking suspension of any license, certificate, registration or other authorization to engage in a business, trade, profession or occupation issued to the obligor by a health regulatory board within the Department of Health Professions pursuant to this title. The notice shall be sent by certified mail, with proof of actual receipt required.

B. Upon the expiration of 30 days' notice to an obligor who is alleged to be in default or delinquent in the payment of a federal- or state-guaranteed educational loan or work-conditional scholarship, an obligee may petition the circuit court in the jurisdiction in which the obligor resides for an order suspending any license, certificate, registration or other authorization to engage in a business, trade, profession or occupation issued to the obligor by any health regulatory board within the Department of Health Professions pursuant to this title.

C. The court shall not suspend a license, certificate, registration or authorization upon finding that an alternate remedy is available to the obligee that is likely to result in collection of the delinquency. Further, the court may refuse to order the suspension upon finding that (i) suspension would result in irreparable harm to the obligor or employees of the obligor or would not result in collection of the delinquency or (ii) the obligor has made a good-faith effort to reach an agreement with the obligee.

D. If the court finds that (i) none of the conditions provided in subsection C apply, (ii) the obligor is delinquent in the payment of a federal- or state-guaranteed educational loan or work-conditional scholarship, and (iii) he holds a license, certificate, registration or other authority to engage in a business, trade, profession or occupation issued by any health regulatory board within the Department of Health Professions pursuant to this title, it shall order suspension of such license, certificate, registration or authority and shall provide a copy of such order to the relevant health regulatory board within the Department of Health Professions.

Any court order for suspension issued pursuant to this section shall require the obligor to surrender any license, certificate, registration or other such authorization to the relevant health regulatory board within 90 days of the date on which the order is entered.

E. If, at any time after entry of the court order for suspension pursuant to subsection D, the obligor (i) pays the delinquency or (ii) reaches an agreement with the obligee to pay the delinquency and makes at least one payment pursuant to the agreement, then, upon proof of the payment or agreement to pay and at least one payment, the court shall rescind the order and, if the obligor has surrendered any license, certificate, registration or other such authorization, shall order reinstatement of the suspended credential. Such payment shall be proved by notarized statement of payment signed by the obligee.

F. No fee shall be charged by any health regulatory board to a person who obtains reinstatement of a license, certificate, registration or authorization pursuant to this section.

G. The procedure set forth in this section shall be in addition to and not in lieu of any existing or future remedies available to an obligee to collect a delinquent debt from an obligor alleged to be delinquent.

(2003, c. 975.)

§ 54.1-2400.6. Hospitals and other health care institutions required to report disciplinary actions against and certain disorders of health professionals; immunity from liability; failure to report.

A. The chief executive officer and the chief of staff of every hospital or other health care institution in the Commonwealth shall report within 30 days, except as provided in subsection B, to the Director of the Department of Health Professions the following information regarding any person (i) licensed, certified, or registered by a health regulatory board or (ii) holding a multistate licensure privilege to practice nursing or an applicant for licensure, certification or registration unless exempted under subsection E:

1. Any information of which he may become aware in his official capacity indicating that such a health professional is in need of treatment or has been committed or admitted as a patient, either at his institution or any other health care institution, for treatment of substance abuse or a psychiatric illness that may render the health professional a danger to himself, the public or his patients.

2. Any information of which he may become aware in his official capacity indicating, after reasonable investigation and consultation as needed with the appropriate internal boards or committees authorized to impose disciplinary action on a health professional, that there is a reasonable probability that such health professional may have engaged in unethical, fraudulent or unprofessional conduct as defined by the pertinent licensing statutes and regulations. The report required under this section shall be submitted within 30 days of the date that the chief executive officer or chief of staff determines that a reasonable probability exists.

3. Any disciplinary proceeding begun by the institution as a result of conduct involving (i) intentional or negligent conduct that causes or is likely to cause injury to a patient or patients, (ii) professional ethics, (iii) professional incompetence, (iv) moral turpitude, or (v) substance abuse.

The report required under this section shall be submitted within 30 days of the date of written communication to the health professional notifying him of the initiation of a disciplinary proceeding.

4. Any disciplinary action taken during or at the conclusion of disciplinary proceedings or while under investigation, including but not limited to denial or termination of employment, denial or termination of privileges or restriction of privileges that results from conduct involving (i) intentional or negligent conduct that causes or is likely to cause injury to a patient or patients, (ii) professional ethics, (iii) professional incompetence, (iv) moral turpitude, or (v) substance abuse. The report required under this section shall be submitted within 30 days of the date of written communication to the health professional notifying him of any disciplinary action.

5. The voluntary resignation from the staff of the health care institution or voluntary restriction or expiration of privileges at the institution of any health professional while such health professional is under investigation or is the subject of disciplinary proceedings taken or begun by the institution or a committee thereof for any reason related to possible intentional or negligent conduct that causes or is likely to cause injury to a patient or patients, medical incompetence, unprofessional conduct, moral turpitude, mental or physical impairment, or substance abuse.

Any report required by this section shall be in writing directed to the Director of the Department of Health Professions, shall give the name and address of the person who is the subject of the report and shall fully describe the circumstances surrounding the facts required to be reported. The report shall include the names and contact information of individuals with knowledge about the facts required to be reported and the names and contact information of individuals from whom the hospital or health care institution sought information to substantiate the facts required to be reported. All relevant medical records shall be attached to the report if patient care or the health professional's health status is at issue. The reporting hospital or health care institution shall also provide notice to the Department that it has submitted a report to the National Practitioner Data Bank under the Health Care Quality Improvement Act (42 U.S.C. § 11101 et seq.). The reporting hospital or health care institution shall give the health professional who is the subject of the report an opportunity to review the report. The health professional may submit a separate report if he disagrees with the substance of the report.

This section shall not be construed to require the hospital or health care institution to submit any proceedings, minutes, records or reports that are privileged under § 8.01-581.17, except that the provisions of §/n 8.01-581.17 shall not bar (i) any report required by this section or (ii) any requested medical records that are necessary to investigate unprofessional conduct reported pursuant to this subtitle or unprofessional conduct that should have been reported pursuant to this subtitle. Under no circumstances shall compliance with this section be construed to waive or limit the privilege provided in § 8.01-581.17. No person or entity shall be obligated to report any matter to the Department if the person or entity has actual notice that the same matter has already been reported to the Department.

B. Any report required by this section concerning the commitment or admission of such health professional as a patient shall be made within five days of when the chief administrative officer learns of such commitment or admission.

C. The State Health Commissioner or the Commissioner of the Department of Social Services shall report to the Department any information of which their agencies may become aware in the course of their duties that a health professional may be guilty of fraudulent, unethical or unprofessional conduct as defined by the pertinent licensing statutes and regulations.

D. Any person making a report by this section, providing information pursuant to an investigation or testifying in a judicial or administrative proceeding as a result of such report shall be immune from any civil liability alleged to have resulted therefrom unless such person acted in bad faith or with malicious intent.

E. Medical records or information learned or maintained in connection with an alcohol or drug prevention function that is conducted, regulated, or directly or indirectly assisted by any department or agency of the United States shall be exempt from the reporting requirements of this section to the extent that such reporting is in violation of 42 U.S.C. § 290dd-2 or regulations adopted thereunder.

F. Any person who fails to make a report to the Department as required by this section shall be subject to a civil penalty not to exceed \$25,000 assessed by the Director. The Director shall report the assessment of such civil penalty to the Commissioner of the Department of Health. Any person assessed a civil penalty pursuant to this section shall not receive a license or certification or renewal of such unless such penalty has been paid pursuant to § 32.1-125.01. The Medical College of Virginia Hospitals and the University of Virginia Hospitals shall not receive certification pursuant to § 32.1-137 or Article 1.1 (§ 32.1-102.1 et seq.) of Chapter 4 of Title 32.1 unless such penalty has been paid.

(Code 1950, § 32-137.1; 1977, c. 639; 1978, c. 541, § 54-325.1; 1979, cc. 720, 727; 1986, cc. 303, 434; 1988, c. 765, § 54.1-2906; 1994, c. 234; 2000, c. 77; 2003, cc. 456, 753, 762; 2004, cc. 49, 64.)

§ 54.1-2400.7. Practitioners treating other practitioners for certain disorders to make reports; immunity from liability.

A. Every practitioner in the Commonwealth who is registered, certified, or licensed by a health regulatory board or who holds a multistate licensure privilege to practice nursing who treats professionally any person registered, certified, or licensed by a health regulatory board or who holds a multistate licensure privilege shall report, unless exempted by subsection C hereof, to the Director of the Department of Health Professions whenever any such health professional is treated for mental disorders, chemical dependency or alcoholism, unless the attending practitioner has determined that there is a reasonable probability that the person being treated is competent to continue in practice or would not constitute danger to himself or to the health and welfare of his patients or the public.

B. Any person making a report required by this section or testifying in a judicial or administrative proceeding as a result of such report shall be immune from any civil liability alleged to have resulted therefrom unless such person acted in bad faith or with malicious intent.

C. Medical records or information learned or maintained in connection with an alcohol or drug abuse prevention function that is conducted, regulated, or directly or indirectly assisted by any department or agency of the United States shall be exempt from the reporting requirements of this

section to the extent that such reporting is in violation of 42 U.S.C. § 290dd-2 or regulations adopted thereunder.

(Code 1950, § 54-317.2; 1966, c. 166; 1973, c. 529, § 54-317.3; 1974, c. 555; 1977, c. 639; 1978, c. 541; 1986, c. 434; 1988, c. 765, § 54.1-2907; 1996, cc. 937, 980; 2004, cc. 49, 64.)

#### § 54.1-2400.8. Immunity for reporting.

In addition to the immunity for reporting as provided by §§ 54.1-2400.6 and 54.1-2400.7, any person making a report regarding the conduct or competency of a health care practitioner as required by law or regulation or providing information pursuant to an investigation or testifying in a judicial or administrative proceeding as a result of such report shall be immune from any civil liability resulting therefrom unless such person acted in bad faith or with malicious intent.

(2004, c. 64.)

#### § 54.1-2401. Monetary penalty.

Any person licensed, registered or certified or issued a multistate licensure privilege by any health regulatory board who violates any provision of statute or regulation pertaining to that board and who is not criminally prosecuted, may be subject to the monetary penalty provided in this section. If the board or any special conference committee determines that a respondent has violated any provision of statute or regulation pertaining to the board, it shall determine the amount of any monetary penalty to be imposed for the violation, which shall not exceed \$5,000 for each violation. The penalty may be sued for and recovered in the name of the Commonwealth. All such monetary penalties shall be deposited in the Literary Fund.

(1980, c. 678, § 54-961; 1988, c. 765; 1992, c. 659; 1997, c. 564; 2003, cc. 753, 762; 2004, c. 49.)

#### § 54.1-2402. Citizen members on health regulatory boards.

Citizen members appointed to boards within the Department of Health Professions after July 1, 1986, shall participate in all matters. Of the citizen members first appointed to boards with two citizen members, one shall be appointed for a term of two years and one for the maximum term established for members of the respective board. On boards with one citizen member, the citizen member initially appointed shall be appointed for the maximum term established for members of that board. The provisions of this section relating to terms of citizen members on such boards shall not apply to the Board of Medicine or to the Board of Funeral Directors and Embalmers. For the purposes of this section, "citizen member" shall have the meaning provided in § 54.1-107.

(1986, c. 464, § 54-950.3; 1988, cc. 66, 765.)

#### § 54.1-2402.1. Appointments, removals, and limitation of terms of members of regulatory boards.

Except as otherwise expressly provided, members shall be appointed by the Governor and may be removed by him as provided in subsection B of §/n 2.2-108. Any vacancy occurring other than by

expiration of term shall be filled for the unexpired term. Members shall hold office after expiration of their terms until their successors are duly appointed and have qualified.

All members of regulatory boards appointed by the Governor for terms commencing on or after July 1, 1988, shall be appointed for terms of four years. No members shall serve more than two successive full terms on any regulatory board.

(1988, c. 42, § 54-950.4.)

§ 54.1-2403. Certain advertising prohibited.

No person licensed by one of the boards within the Department shall use any form of advertising that contains any false, fraudulent, misleading or deceptive statement or claim.

(1987, c. 199, § 54-959.1; 1988, c. 765.)

§ 54.1-2403.01. Routine component of prenatal care.

As a routine component of prenatal care, every practitioner licensed pursuant to this subtitle who renders prenatal care, including any holder of a multistate licensure privilege to practice nursing, regardless of the site of such practice, shall advise every pregnant woman who is his patient of the value of testing for Human Immunodeficiency Viruses (HIV) infection and shall request of each such pregnant woman consent to such testing. The confidentiality provisions of § 32.1-36.1, the informed consent stipulations, test result disclosure conditions, and appropriate counseling requirements of § 32.1-37.2 shall apply to any HIV testing conducted pursuant to this section. Practitioners shall counsel all pregnant women with HIV-positive test results about the dangers to the fetus and the advisability of receiving treatment in accordance with the then current Centers for Disease Control recommendations for HIV-positive pregnant women. Any pregnant woman shall have the right to refuse consent to testing for HIV infection and any recommended treatment. Documentation of such refusal shall be maintained in the patient's medical record.

(1995, c. 309; 2004, c. 49.)

§ 54.1-2403.1. Protocol for certain medical history screening required.

A. As a routine component of every pregnant woman's prenatal care, every practitioner licensed pursuant to this subtitle who renders prenatal care, including any holder of a multistate licensure privilege to practice nursing, regardless of the site of such practice, shall establish and implement a medical history protocol for screening pregnant women for substance abuse to determine the need for a specific substance abuse evaluation. The medical history protocol shall include, but need not be limited to, a description of the screening device and shall address abuse of both legal and illegal substances. The medical history screening may be followed, as necessary and appropriate, with a thorough substance abuse evaluation.

B. The results of such medical history screening and of any specific substance abuse evaluation which may be conducted shall be confidential and, if the woman is enrolled in a treatment program operated by any facility receiving federal funds, shall only be released as provided in federal law



and regulations. However, if the woman is not enrolled in a treatment program or is not enrolled in a program operated by a facility receiving federal funds, the results may only be released to the following persons:

1. The subject of the medical history screening or her legally authorized representative.
2. Any person designated in a written release signed by the subject of the medical history screening or her legally authorized representative.
3. Health care providers for the purposes of consultation or providing care and treatment to the person who was the subject of the medical history screening.

C. The results of the medical history screening required by this section or any specific substance abuse evaluation which may be conducted as part of the prenatal care shall not be admissible in any criminal proceeding.

D. Practitioners shall advise their patients of the results of the medical history screening and specific substance abuse evaluation, and shall provide such information to third-party payers as may be required for reimbursement of the costs of medical care. However, such information shall not be admissible in any criminal proceedings. Practitioners shall advise all pregnant women whose medical history screenings and specific substance abuse evaluations are positive for substance abuse of appropriate treatment and shall inform such women of the potential for poor birth outcomes from substance abuse.

(1992, c. 428; 2004, c. 49.)

#### § 54.1-2403.2. Record storage.

A. Medical records, as defined in § 42.1-77, may be stored by computerized or other electronic process or microfilm, or other photographic, mechanical, or chemical process; however, the stored record shall identify the location of any documents or information that could not be so technologically stored. If the technological storage process creates an unalterable record, a health care provider licensed, certified, registered or issued a multistate licensure privilege by a health regulatory board within the Department shall not be required to maintain paper copies of medical records that have been stored by computerized or other electronic process, microfilm, or other photographic, mechanical, or chemical process. Upon completing such technological storage, paper copies of medical records may be destroyed in a manner that preserves the patient's confidentiality. However, any documents or information that could not be so technologically stored shall be preserved.

B. Notwithstanding the authority given in this section to store patient records in the form of microfilm, prescription dispensing records maintained in or on behalf of any pharmacy registered or permitted in Virginia shall only be stored in compliance with §§ 54.1-3410, 54.1-3411 and 54.1-3412.

(1994, c. 390; 1998, c. 470; 2004, c. 49.)

§ 54.1-2403.3. Medical records; ownership; provision of copies.

Medical records maintained by any health care provider as defined in §/n 32.1-127.1:03 shall be the property of such health care provider or, in the case of a health care provider employed by another health care provider, the property of the employer. Such health care provider shall release copies of any such medical records in compliance with § 32.1-127.1:03 or §/n 8.01-413, if the request is made for purposes of litigation, or as otherwise provided by state or federal law.

(1995, c. 754; 1997, c. 682; 1998, c. 470.)

§ 54.1-2404. Itemized statements required upon request.

Upon the request of any of his patients, any health care provider licensed or certified by any of the boards within the Department, except in the case of health care services as defined in Chapter 43 (§ 38.2-4300 et seq.) of Title 38.2, shall provide to such patient an itemized statement of the charges for the services rendered to the requesting patient regardless of whether a bill for the services which are the subject of the request has been or will be submitted to any third party payor including medical assistance services or the state/local hospitalization program.

(1990, c. 590.)

§ 54.1-2405. Transfer of patient records in conjunction with closure, sale, or relocation of practice; notice required.

A. No person licensed, registered, or certified by one of the health regulatory boards under the Department shall transfer records pertaining to a current patient in conjunction with the closure, sale or relocation of a professional practice until such person has first attempted to notify the patient of the pending transfer, by mail, at the patient's last known address, and by publishing prior notice in a newspaper of general circulation within the provider's practice area, as specified in § 8.01-324.

The notice shall specify that, at the written request of the patient or an authorized representative, the records or copies will be sent, within a reasonable time, to any other like-regulated provider of the patient's choice or provided to the patient pursuant to § 32.1-127.1:03. The notice shall also disclose whether any charges will be billed by the provider for supplying the patient or the provider chosen by the patient with the originals or copies of the patient's records. Such charges shall not exceed the actual costs of copying and mailing or delivering the records.

B. For the purposes of this section:

"Current patient" means a patient who has had a patient encounter with the provider or his professional practice during the two-year period immediately preceding the date of the record transfer.

"Relocation of a professional practice" means the moving of a practice located in Virginia from the location at which the records are stored at the time of the notice to another practice site that is located more than 30 miles away or to another practice site that is located in another state or the District of Columbia.

(1992, c. 759; 2003, cc. 912, 917; 2004, c. 53.)

§ 54.1-2406. Treatment records of practitioners.

No records of the identity, diagnosis, prognosis, or treatment of any practitioner of any profession regulated by any of the regulatory boards within the Department of Health Professions obtained by the Department or any health regulatory board from a health care provider or facility that is treating or has treated such practitioner for drug addiction or chronic alcoholism shall be disclosed except:

1. In a disciplinary hearing before a health regulatory board or in any subsequent trial or appeal of a board action or order;
2. To licensing or disciplinary authorities of other jurisdictions or to hospital committees located within or outside this Commonwealth which are concerned with granting, limiting, or denying a physician hospital privileges if a final determination regarding disciplinary action has been made; or
3. Pursuant to an order of a court of competent jurisdiction.

(1992, c. 808.)

§ 54.1-2407. Requirements for human research.

Any person licensed, registered, or certified by any health regulatory board who engages in the conduct of human research, as defined in § 32.1-162.16, shall comply with the provisions of Chapter 5.1 (§ 32.1-162.16 et seq.) of Title 32.1. Failure to so comply shall constitute unprofessional conduct.

(1992, c. 603.)

§ 54.1-2408. Disqualification for license, certificate or registration.

A board within the Department of Health Professions shall refuse to admit a candidate to any examination and shall refuse to issue a license, certificate or registration to any applicant if the candidate or applicant has had his license, certificate or registration to practice the profession or occupation revoked or suspended, and has not had his license, certificate or registration to so practice reinstated by the jurisdiction which revoked or suspended his license, certificate or registration.

(1993, c. 991.)

§ 54.1-2408.1. Summary suspension of licenses, certificates, registrations, or multistate licensure privilege; allegations to be in writing.

A. Any health regulatory board may suspend the license, certificate, registration or multistate licensure privilege of any person holding a license, certificate, registration, or licensure privilege issued by it without a hearing simultaneously with the institution of proceedings for a hearing, if the relevant board finds that there is a substantial danger to the public health or safety which warrants

this action. A board may meet by telephone conference call when summarily suspending a license, certificate, registration, or licensure privilege if a good faith effort to assemble a quorum of the board has failed and, in the judgment of a majority of the members of the board, the continued practice by the individual constitutes a substantial danger to the public health or safety. Institution of proceedings for a hearing shall be provided simultaneously with the summary suspension. The hearing shall be scheduled within a reasonable time of the date of the summary suspension.

B. Allegations of violations of this title shall be made in writing to the relevant health regulatory board.

(1997, c. 556; 2004, c. 49.)

§ 54.1-2408.2. Three-year minimum period for reinstatement after revocation.

When the certificate, registration or license of any person certified, registered or licensed by one of the health regulatory boards has been revoked, the board may, after three years and upon the payment of a fee prescribed by the Board, consider an application for reinstatement of a certificate, registration or license in the same manner as the original certificates, registrations or licenses are granted. The reinstatement of a certificate, registration or license shall require the affirmative vote of three-fourths of the members at a meeting. In the discretion of the board, such reinstatement may be granted without further examination.

(2003, cc. 753, 762.)

§ 54.1-2409. Mandatory suspension or revocation; reinstatement; appeal.

Upon receipt of documentation by a court or agency, state or federal, that a person licensed, certified or registered by a board within the Department of Health Professions has had his license, certificate or registration to practice the same profession or occupation revoked or suspended in another jurisdiction and has not had his license, certificate or registration to so practice reinstated within that jurisdiction, or has been convicted of a felony or has been adjudged incapacitated, the Director of the Department shall immediately suspend, without a hearing, the license, certificate or registration of any person so disciplined, convicted or adjudged. The Director shall notify such person or his legal guardian, conservator, trustee, committee or other representative of the suspension in writing to his address on record with the Department. Such notice shall include a copy of the documentation from such court or agency, certified by the Director as the documentation received from such court or agency. Such person shall not have the right to practice within this Commonwealth until his license, certificate or registration has been reinstated by the Board.

The clerk of any court in which a conviction of a felony or an adjudication of incapacity is made, who has knowledge that a person licensed, certified or registered by a board within the Department has been convicted or found incapacitated, shall have a duty to report these findings promptly to the Director.

When a conviction has not become final, the Director may decline to suspend the license, certificate or registration until the conviction becomes final if there is a likelihood of injury or damage to the public if the person's services are not available.

Any person whose license, certificate or registration has been suspended as provided in this section may apply to the board for reinstatement of his license, certificate or registration. Such person shall be entitled to a hearing not later than the next regular meeting of the board after the expiration of thirty days from the receipt of such application, and shall have the right to be represented by counsel and to summon witnesses to testify in his behalf. The Board may consider other information concerning possible violations of Virginia law at such hearing, if reasonable notice is given to such person of the information.

The reinstatement of the applicant's license, certificate or registration shall require the affirmative vote of three-fourths of the members of the board at the hearing. The board may order such reinstatement without further examination of the applicant, or reinstate the license, certificate or registration upon such terms and conditions as it deems appropriate.

Pursuant to the authority of the Board of Nursing provided in Chapter 30 (§/n 54.1-3000 et seq.) of this title, the provisions of this section shall apply, mutatis mutandis, to persons holding a multistate licensure privilege to practice nursing.

(1993, c. 991; 1997, c. 801; 2002, c. 455; 2004, c. 49.)

§ 54.1-2409.1. Criminal penalties for practicing certain professions and occupations without appropriate license.

Any person who, without holding a current valid license or multistate licensure privilege, issued by a regulatory board pursuant to this title (i) performs an invasive procedure for which a license or multistate licensure privilege is required; (ii) administers, prescribes, sells, distributes, or dispenses a controlled drug; or (iii) practices a profession or occupation after having his license or multistate licensure privilege to do so suspended or revoked shall be guilty of a Class 6 felony.

(1994, c. 722; 2004, c. 49.)

§ 54.1-2409.2. Board to set criteria for determining need for professional regulation.

The Board of Health Professions shall study and prepare a report for submission to the Governor and the General Assembly by October 1, 1997, containing its findings and recommendations on the appropriate criteria to be applied in determining the need for regulation of any health care occupation or profession. Such criteria shall address at a minimum the following principles:

1. Promotion of effective health outcomes and protection of the public from harm.
2. Accountability of health regulatory bodies to the public.
3. Promotion of consumers' access to a competent health care provider workforce.
4. Encouragement of a flexible, rational, cost-effective health care system that allows effective working relationships among health care providers.
5. Facilitation of professional and geographic mobility of competent providers.

6. Minimization of unreasonable or anti-competitive requirements that produce no demonstrable benefit.

The Board in its study shall analyze and frame its recommendations in the context of the total health care delivery system, considering the current and changing nature of the settings in which health care occupations and professions are practiced. It shall recognize in its recommendations the interaction of the regulation of health professionals with other areas of regulation including, but not limited to, the following:

1. Regulation of facilities, organizations, and insurance plans;
2. Health delivery system data;
3. Reimbursement issues;
4. Accreditation of education programs; and
5. Health workforce planning efforts.

The Board in its study shall review and analyze the work of publicly and privately sponsored studies of reform of health care workforce regulation in other states and nations. In conducting its study the Board shall cooperate with the state academic health science centers with accredited professional degree programs.

(1996, c. 532.)

§ 54.1-2409.3. Participation of advisory boards in disciplinary proceedings.

Notwithstanding any provision of law to the contrary, whenever a disciplinary proceeding involves a respondent who holds a license or certificate authorizing the practice of a profession represented by a statutorily created advisory board whose members are appointed by the Governor, a member of such advisory board shall sit as a full voting member on any special conference committee, informal fact-finding panel or formal hearing panel pursuant to Article 3 (§ 2.2-4018 et seq.) of Chapter 40 of Title 2.2, and §§/n 54.1-2400, 54.1-2408.2, or § 54.1-2917.

(2002, c. 698.)

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**CHAPTER 28 OF TITLE 54.1 - FUNERAL  
SERVICE**

**CODE OF VIRGINIA**

**FUNERAL DIRECTORS AND  
EMBALMERS**

# Chapter 28 of Title 54.1 of the Code of Virginia

## Funeral Service

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## **§ 54.1-2800. Definitions.**

As used in this chapter, unless the context requires a different meaning:

"Advertisement" means any information disseminated or placed before the public.

"At-need" means at the time of death or while death is imminent.

"Board" means the Board of Funeral Directors and Embalmers.

"Cremate" means to reduce a dead human body to ashes and bone fragments by the action of fire.

"Cremator" means a person or establishment that owns or operates a crematory or crematorium or cremates dead human bodies.

"Crematory" or "crematorium" means a facility containing a furnace for cremation of dead human bodies.

"Embalmer" means any person engaged in the practice of embalming.

"Embalming" means the preservation and disinfection of the human dead by external or internal application of chemicals.

"Funeral directing" means the for-profit profession of directing or supervising funerals, preparing human dead for burial by means other than embalming, or making arrangements for funeral services or the financing of funeral services.

"Funeral director" means any person engaged in the practice of funeral directing.

"Funeral service establishment" means any main establishment, branch or chapel which is permanently affixed to the real estate and for which a certificate of occupancy has been issued by the local building official where any part of the profession of funeral directing, the practice of funeral services, or the act of embalming is performed.

"Funeral service licensee" means a person who is licensed in the practice of funeral services.

"In-person communication" means face-to-face communication and telephonic communication.

"Next of kin" means any of the following persons, regardless of the relationship to the decedent: any person designated to make arrangements for the disposition of the decedent's remains upon his death pursuant to § 54.1-2825, the legal spouse, child over 18 years of age, custodial parent, noncustodial parent, siblings over 18 years of age, guardian of minor child, guardian of minor siblings, maternal grandparents, paternal grandparents, maternal siblings over 18 years of age and paternal siblings over 18 years of age, or any other relative in the descending order of blood relationship.

"Practice of funeral services" means engaging in the care and disposition of the human dead, the preparation of the human dead for the funeral service, burial or cremation, the making of arrangements for the funeral service or for the financing of the funeral service and the selling or making of financial arrangements for the sale of funeral supplies to the public.

"Preneed" means at any time other than at-need.

"Preneed funeral contract" means any agreement where payment is made by the consumer prior to the receipt of services or supplies contracted for, which evidences arrangements prior to death for: (i) the providing of funeral services or (ii) the sale of funeral supplies.

"Preneed funeral planning" means the making of arrangements prior to death for: (i) the providing of funeral services or (ii) the sale of funeral supplies.

"Resident trainee" means a person who is preparing to be licensed for the practice of funeral services under the direct supervision of a practitioner licensed by the Board.

"Solicitation" means initiating contact with consumers with the intent of influencing their selection of a funeral plan or funeral service provider.

(Code 1950, § 54-260.1; 1956, c. 220; 1972, c. 797, § 54-260.67; 1988, c. 765; 1989, c. 684; 1991, c. 539; 1997, c. 116; 1998, cc. 718, 867; 2003, c. 505.)

#### **§ 54.1-2801. Exemptions.**

A. The provisions of this chapter shall not apply to any officer of local or state institutions or to the burial of the bodies of inmates of state institutions when buried at the expense of the Commonwealth or any of its political subdivisions.

B. Any person holding a license as a funeral director or embalmer or an equivalent in another state, having substantially similar requirements as the Board, may apply to the Board for courtesy card privileges to remove bodies from and to arrange funerals or embalm bodies in this Commonwealth. However, these privileges shall not include the right to establish or engage generally in the business of funeral directing and embalming in Virginia.

(Code 1950, §§ 54-260.1, 54-260.22 through 54-260.30, 54-260.32; 1956, c. 220; 1966, c. 284, § 54-260.70; 1972, c. 797, § 54-260.67; 1973, c. 296; 1974, c. 686; 1978, c. 849; 1986, c. 43; 1988, c. 765.)

#### **§ 54.1-2802. Board; appointment; terms; vacancies; meetings; quorum.**

The Board of Funeral Directors and Embalmers shall consist of nine members as follows: seven funeral service licensees of the Board with at least five consecutive years of funeral service practice in this Commonwealth immediately prior to appointment and two citizen members. The terms of office shall be for four years from July 1. Appointments shall be made annually on or before June 30 as the terms of the members respectively expire. Appointments to the Board

should generally represent the geographical areas of the Commonwealth. The Board shall annually elect a president, a vice-president and a secretary-treasurer.

The Board shall hold at least two meetings each year. In addition, the Board may meet as often as its duties require. Five members shall constitute a quorum. No less than quarterly, the Board shall offer examinations for licensure. Such examinations for licensure are not required to be held in conjunction with meetings of the Board.

(1988, cc. 42, 765; 2000, c. 773.)

#### **§ 54.1-2803. Specific powers and duties of Board.**

In addition to the general powers and duties conferred in this subtitle, the Board shall have the following specific powers and duties to:

1. Establish standards of service and practice for the funeral service profession in the Commonwealth.
2. Regulate and inspect funeral service establishments, their operation and licenses.
3. Require licensees and resident trainees to submit all information relevant to their practice or business.
4. Enforce the relevant regulations of the Board of Health.
5. Enforce local ordinances relating to funeral service establishments.
6. Advise the Department of Health Professions of any training appropriate for inspectors serving as the Board's agents.
7. Establish, supervise, regulate and control, in accordance with the law, programs for resident trainees.
8. Establish standards for and approve schools of mortuary science or funeral service.
9. Regulate preneed funeral contracts and preneed funeral trust accounts as prescribed by this chapter, including, but not limited to, the authority to prescribe preneed contract forms, disclosure requirements and disclosure forms and to require reasonable bonds to insure performance of preneed contracts.
10. Inspect crematories and their operations.

(Code 1950, §§ 54-260.3, 54-260.4, 54-260.6, 54-260.7, 54-260.11 through 54-260.14, 54-260.16 through 54-260.18, 54-260.20, 54-260.21, 54-260.45 through 54-260.49; 1956, c. 220; 1960, c. 61, § 54-260.69; 1966, c. 283, § 54-260.65; 1970, c. 385; 1972, c. 797, §§ 54-260.64,

should generally represent the geographical areas of the Commonwealth. The Board shall annually elect a president, a vice-president and a secretary-treasurer.

The Board shall hold at least two meetings each year. In addition, the Board may meet as often as its duties require. Five members shall constitute a quorum. No less than quarterly, the Board shall offer examinations for licensure. Such examinations for licensure are not required to be held in conjunction with meetings of the Board.

(1988, cc. 42, 765; 2000, c. 773.)

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10. Inspect crematories and their operations.

(Code 1950, §§ 54-260.3, 54-260.4, 54-260.6, 54-260.7, 54-260.11 through 54-260.14, 54-260.16 through 54-260.18, 54-260.20, 54-260.21, 54-260.45 through 54-260.49; 1956, c. 220; 1960, c. 61, § 54-260.69; 1966, c. 283, § 54-260.65; 1970, c. 385; 1972, c. 797, §§ 54-260.64,

54-260.68; 1978, c. 849; 1979, c. 650; 1980, c. 728; 1984, cc. 627, 704; 1988, c. 765; 1989, c. 684; 2000, c. 773; 2003, c. 505.)

**§ 54.1-2804. Licensing authority.**

The Board of Funeral Directors and Embalmers is authorized to determine the qualifications to enable any person to engage in the practice of funeral service, preneed funeral planning, funeral directing, embalming and the operation of a funeral service establishment.

(Code 1950, § 54-260.70; Code 1950, §§ 54-260.22 through 54-260.30, 54-260.32; 1956, c. 220; 1966, c. 284, § 54-260.70; 1972, c. 797; 1973, c. 296; 1974, c. 686; 1978, c. 849; 1986, c. 43; 1988, c. 765; 1989, c. 684.)

**§ 54.1-2805. Engaging in the practice of funeral services or the business of preneed funeral planning or acting as a funeral director or embalmer without a license.**

It shall be unlawful for any person to engage in or hold himself out as engaging in the practice of funeral services or the business of preneed funeral planning, to operate a funeral service establishment, or to act as a funeral director or embalmer or hold himself out as such unless he is licensed by the Board. Engaging in the practice of funeral services, preneed funeral planning, operating a funeral service establishment, or acting as a funeral director or embalmer shall be recognized as that of a health profession.

(1974, c. 257, § 54-260.73:1; 1988, c. 765; 1989, c. 684; 2000, c. 773.)

**§ 54.1-2806. Refusal, suspension or revocation of license.**

The Board may refuse to admit a candidate to any examination, refuse to issue a license to any applicant and may suspend a license for a stated period or indefinitely, or revoke any license or censure or reprimand any licensee or place him on probation for such time as it may designate for any of the following causes:

1. Conviction of any felony or any crime involving moral turpitude;
2. Unprofessional conduct which is likely to defraud or to deceive the public or clients;
3. Misrepresentation or fraud in the conduct of the funeral service profession, or in obtaining or renewing a license;
4. False or misleading advertising or solicitation;
5. Solicitation at-need or any preneed solicitation using in-person communication by the licensee, his agents, assistants or employees; however, general advertising and preneed solicitation, other than in-person communication, shall be allowed;

6. Employment by the licensee of persons known as "cappers" or "steerers," or "solicitors," or other such persons to obtain the services of a holder of a license for the practice of funeral service;
7. Employment directly or indirectly of any agent, employee or other person, on part or full time, or on a commission, for the purpose of calling upon individuals or institutions by whose influence dead human bodies may be turned over to a particular funeral establishment;
8. Direct or indirect payment or offer of payment of a commission to others by the licensee, his agents, or employees for the purpose of securing business;
9. Use of alcohol or drugs to the extent that such use renders him unsafe to practice his licensed activity;
10. Aiding or abetting an unlicensed person to practice within the funeral service profession;
11. Using profane, indecent or obscene language within the immediate hearing of the family or relatives of a deceased, whose body has not yet been interred or otherwise disposed of;
12. Solicitation or acceptance by a licensee of any commission or bonus or rebate in consideration of recommending or causing a dead human body to be disposed of in any crematory, mausoleum or cemetery;
13. Violation of any statute, ordinance or regulation affecting the handling, custody, care or transportation of dead human bodies;
14. Refusing to surrender promptly the custody of a dead human body upon the express order of the person lawfully entitled to custody;
15. Knowingly making any false statement on a certificate of death;
16. Violation of any provisions of Chapter 7 (§ 32.1-249 et seq.) of Title 32.1;
17. Failure to comply with § 54.1-2812, and to keep on file an itemized statement of funeral expenses in accordance with Board regulations;
18. Knowingly disposing of parts of human remains, including viscera, that are received with the body by the funeral establishment, in a manner different from that used for final disposition of the body, unless the persons authorizing the method of final disposition give written permission that the body parts may be disposed of in a manner different from that used to dispose of the body;
19. Violating or failing to comply with Federal Trade Commission rules regulating funeral industry practices;

20. Violating or cooperating with others to violate any provision of this chapter or the regulations of the Board of Funeral Directors and Embalmers or the Board of Health;

21. Failure to comply with the reporting requirements as set forth in § 54.1-2817 for registered funeral trainees;

22. Failure to provide proper and adequate supervision and training instruction to registered funeral trainees as required by regulations of the Board;

23. Violating any statute or regulation of the Board regarding the confidentiality of information pertaining to the deceased or the family of the deceased or permitting access to the body in a manner that is contrary to the lawful instructions of the next-of-kin of the deceased;

24. Failure to include, as part of the general price list for funeral services, a disclosure statement notifying the next of kin that certain funeral services may be provided off-premises by other funeral service providers; and

25. Disciplinary action against a license, certificate or registration issued by another state, the District of Columbia or territory or possession of the United States.

(Code 1950, §§ 54-260.50, 54-260.59; 1956, c. 220; 1972, c. 797, § 54-260.74; 1979, c. 720; 1981, c. 258; 1986, c. 91; 1988, c. 765; 1989, c. 684; 1990, c. 363; 1996, c. 142; 2003, c. 505.)

**§ 54.1-2807. Other prohibited activities.**

A. A person licensed for the practice of funeral service shall not (i) remove or embalm a body when he has information indicating the death was such that a medical examiner's investigation is required pursuant to § 32.1-283 or 32.1-285.1 or (ii) cremate or bury at sea a body until he has obtained permission of the medical examiner as required by § 32.1-284.

B. Except as provided in §§ 32.1-288 and 32.1-301, funeral service establishments shall not accept a dead human body from any public officer except a medical examiner, or from any public or private facility or person having a professional relationship with the decedent without having first inquired about the desires of the next of kin and the persons liable for the funeral expenses of the decedent. The authority and directions of any next of kin shall govern the disposal of the body.

Any funeral service establishment violating this subsection shall not charge for any service delivered without the directions of the next of kin. However, in cases of accidental or violent death, the funeral service establishment may charge and be reimbursed for the removal of bodies and rendering necessary professional services until the next of kin or the persons liable for the funeral expenses have been notified.

C. No company, corporation or association engaged in the business of paying or providing for the payment of the expenses for the care of the remains of deceased certificate holders or members or engaged in providing life insurance when the contract might or could give rise to an

obligation to care for the remains of the insured shall contract to pay or pay any benefits to any licensee of the Board or other individual in a manner which could restrict the freedom of choice of the representative or next of kin of a decedent in procuring necessary and proper services and supplies for the care of the remains of the decedent.

D. No person licensed for the practice of funeral service or preneed funeral planning or any of his agents shall interfere with the freedom of choice of the general public in the choice of persons or establishments for the care of human remains or of preneed funeral planning or preneed funeral contracts.

E. This section shall not be construed to apply to the authority of any administrator, executor, trustee or other person having a fiduciary relationship with the decedent.

(Code 1950, §§ 54-260.50, 54-260.59; 1956, c. 220; 1972, c. 797, § 54-260.74; 1979, c. 720; 1981, c. 258; 1986, c. 91; 1988, c. 765; 1989, c. 684; 1993, c. 965; 2005, c. 905.)

#### **§ 54.1-2807.1. Confidentiality of information on infectious diseases.**

All information received by any person practicing funeral services or his agent regarding the fact that any dead body which they have received harbors an infectious disease shall be confidential, and disclosure of such information shall be grounds for disciplinary action against the funeral service licensee pursuant to § 54.1-2806.

Notification that a dead body harbors an infectious disease will not constitute grounds for any funeral director's refusal to accept the body.

(1988, c. 836, § 54-260.74:2.)

#### **§ 54.1-2808. .**

Repealed by Acts 1998, c. 867.

#### **§ 54.1-2808.1. Disposition of cremains.**

A funeral director may dispose of the cremains of an individual by interment, entombment, inurnment, or by scattering of the cremains, if after ninety days from the date of cremation, the contracting agent has not claimed the cremains, or instructed the funeral director as to final disposition. The funeral director shall keep a permanent record of all cremains which identifies the method and site of final disposition. The costs and all reasonable expenses incurred in disposing of the cremains shall be borne by the contracting agent. Upon the disposition of the cremains, the funeral director shall not be liable for the cremains or for the method of final disposition. Any funeral director in possession of unclaimed cremains prior to July 1, 1993, may dispose of such cremains in accordance with the provisions of this section. However, no funeral director shall, without written permission of the contracting agent, dispose of cremains in a manner or a location in which the cremains of the deceased are commingled, except in the



scattering of cremains at sea, by air, or in an area used exclusively for such purpose, or place, temporarily, the cremains of persons in the same container or urn.

For the purposes of this section, "contracting agent" means any person, organization, association, institution, or group of persons who contracts with a funeral director or funeral establishment for funeral services.

(1993, c. 531.)

#### **§ 54.1-2809. Penalties.**

Any person, partnership, corporation, association, or its agents or employees who violate any of the provisions of this chapter shall be guilty of a Class 1 misdemeanor.

(Code 1950, § 54-260.61; 1956, c. 220; 1972, c. 797, § 54-260.75; 1988, c. 765.)

#### **§ 54.1-2810. Licensure of funeral establishments.**

No person shall conduct, maintain, manage or operate a funeral establishment unless a license for each such establishment has been issued by the Board. No license to operate a funeral establishment shall be issued by the Board unless each such funeral establishment has in charge, full time, a person licensed for the practice of funeral service or a licensed funeral director. Applications for funeral establishment licenses shall be made on forms furnished by the Board and filed by the owner or the registered agent of the corporation with the Board.

Each funeral establishment license shall expire annually at a time prescribed by Board regulation. A license may be renewed within thirty days of its expiration. Upon expiration of the license, the Board shall notify each licensee of the provisions of this section. Renewal of a license after the expiration of the thirty-day period shall be in the discretion of the Board.

Violations of any provisions of this chapter or any Board regulations by any person, or an officer, agent or employee with the knowledge or consent of any person operating a funeral establishment shall be considered sufficient cause for suspension or revocation of the funeral establishment license.

An operator of a funeral establishment shall not allow any person licensed for the practice of funeral service to operate out of his funeral establishment unless the licensee is the operator or an employee of the operator of a licensed funeral establishment.

If the manager of the funeral service establishment is unable, for any reason, to exercise adequate supervision, direction, management, and control of the funeral establishment, the owner shall designate any funeral service licensee to serve as a temporary manager and notify the Board in writing within fourteen days. If such inability of the manager exceeds ninety days or is expected to exceed ninety days, a new manager shall be designated and registered with the Board. At the conclusion of the ninety-day period for designation of a new manager, a funeral service

establishment which has failed to designate a new manager shall not operate as a funeral service establishment.

When licensing funeral establishments, the Board may grant a hardship waiver from the requirement for a full-time manager licensed for the practice of funeral service or licensed as a funeral director, allowing the operation of two funeral establishments having in charge one full-time person licensed for the practice of funeral service or one licensed funeral director who divides his time between the two funeral establishments. Prior to granting a hardship waiver, the Board shall find that (i) the two establishments have been in operation for at least three years; (ii) the combined average number of funeral calls at the two establishments, as submitted in monthly reports to the Division of Vital Records and Health Statistics of the Virginia Department of Health, over the previous three years is no more than eighty-five per year; and (iii) the distance between the two establishments is thirty five miles or less.

Prior to granting a renewal of a license granted under a hardship waiver, the Board shall determine whether the requirements for license renewal under such waiver continue to exist.

(Code 1950, §§ 54-260.39, 54-260.40; 1956, c. 220; 1972, c. 797, § 54-260.73; 1974, 164; 1978, c. 849; 1988, c. 765; 1996, c. 757; 2000, c. 773.)

#### **§ 54.1-2811. Facility requirements.**

A funeral service establishment shall contain a preparation room equipped with a tile, cement or other waterproof floor, proper drainage and ventilation, the necessary instruments and supplies for the preparation and embalming of dead human bodies for burial, transportation or other disposition, and separate restroom facilities.

A funeral service establishment having more than one location at which it performs funeral services shall not be required to maintain more than one preparation room.

The Board may adopt regulations and classifications to prescribe proper drainage and ventilation and necessary instruments and supplies in preparation rooms and separate restroom facilities.

(Code 1950, §§ 54-260.39, 54-260.40; 1956, c. 220; 1972, c. 797, § 54-260.73; 1974, 164; 1978, c. 849; 1988, c. 765.)

#### **§ 54.1-2812. Itemized statement and general price list of funeral expenses to be furnished.**

Every person licensed pursuant to the provisions of this chapter shall furnish a written general price list and a written itemized statement of charges in connection with the care and disposition of the body of a deceased person.

Individuals inquiring in person about funeral arrangements or the prices of funeral goods shall be given the general price list. Upon beginning discussion of funeral arrangements or the selection of any funeral goods or services, the general price list must be offered by the funeral licensee.

The itemized statement shall include, but not be limited to, the following charges: casket, other funeral merchandise, vault or other burial receptacle, facilities used, transportation costs, embalming, preparation of the body, other professional services used and disclosure statements required by the Federal Trade Commission, which shall be set forth in a clear and conspicuous manner.

Further, there shall be included a statement of all anticipated cash advances and expenditures requested by the person contracting for the funeral arrangements and such other items as required by regulation of the Board of Funeral Directors and Embalmers. The statement shall be furnished to the person contracting for funeral arrangements at the time such arrangements are made if the person is present and, if not present, no later than the time of the final disposition of the body.

The general price list and itemized statement of funeral expenses shall comply with forms prescribed by regulation of the Board. All regulations promulgated herewith shall promote the purposes of this section.

(1979, c. 8, § 54-260.71:1; 1986, c. 42; 1988, c. 765.)

#### **§ 54.1-2813. License for the practice of funeral service.**

To be licensed for the practice of funeral service, a person shall (i) be at least 18 years of age; (ii) hold a high school diploma or its equivalent; (iii) have completed a resident trainee program prescribed by the Board in regulation; (iv) have graduated from a school of mortuary science or funeral service approved by the Board; and (v) have passed the examination for licensure.

The Board, in its discretion, may license an individual convicted of a felony if he has successfully fulfilled all conditions of sentencing, been pardoned, or has had his civil rights restored.

The Board, in its discretion, may refuse to license an individual who has a criminal or disciplinary proceeding pending against him in any jurisdiction in the United States.

(Code 1950, § 54-260.70; Code 1950, §§ 54-260.22 through 54-260.30, 54-260.32; 1956, c. 220; 1966, c. 284, § 54-260.70; 1972, c. 797; 1973, c. 296; 1974, c. 686; 1978, c. 849; 1986, c. 43; 1988, c. 765; 1990, c. 363; 2005, c. 477.)

#### **§ 54.1-2814. Examination.**

Each applicant for license for the practice of funeral service shall be examined in writing on:

1. Basic and health sciences including anatomy, chemistry, bacteriology, pathology, hygiene and public health;
2. Funeral service arts and sciences including embalming and restorative art;

3. Funeral service administration including accounting, funeral law, psychology, and funeral principles, directing and management.

The Board may recognize other examinations that it considers equivalent to its examination.

(Code 1950, § 54-260.70; Code 1950, §§ 54-260.22 through 54-260.30, 54-260.32; 1956, c. 220; 1966, c. 284, § 54-260.70; 1972, c. 797; 1973, c. 296; 1974, c. 686; 1978, c. 849; 1986, c. 43; 1988, c. 765; 2000, c. 773.)

**§ 54.1-2814.1. Registration as a cremator.**

A. No crematorium, cemeterian, memorial society, or other establishment, organization, or person shall cremate a dead human body without having registered with the Board as a cremator.

B. The Board shall prescribe the procedures for registration under this section. Such procedures shall include a requirement that any crematory registered with the Board that engages in the practice of funeral services operate in compliance with the provisions § 54.1-2810. However, nothing in this subsection shall require a crematory registered with the Board to obtain a license as a funeral service establishment as long as the crematory provides cremation services directly to or for a licensed funeral service establishment only and not to the general public.

C. The Board may suspend or revoke any crematory registration or deny any application for such registration, or refuse to issue or renew any such registration, if the Board finds that the applicant or registrant has violated any provision of this chapter, the Board's regulations, or if the Board finds the crematory has operated or is operating in a manner that endangers the health, safety or welfare of the public.

(2000, c. 773; 2003, c. 505.)

**§ 54.1-2815. Application for license; how license signed; duration.**

All applications for examination for a license for the practice of funeral service shall be upon forms furnished by the Board.

All licenses shall be signed by the president and secretary of the Board and stamped with the seal of the Board.

All licenses shall be issued or renewed for a period prescribed by the Board, not exceeding two years.

(1978, c. 849, § 54-260.70:1; 1988, c. 765.)

**§ 54.1-2816. License renewal; failure to return renewal form.**

Prior to the expiration of a license, the Board shall provide to each person licensed to practice funeral service, embalming, or funeral directing a renewal notice and application to be submitted

3. Funeral service administration including accounting, funeral law, psychology, and funeral principles, directing and management.

The Board may recognize other examinations that it considers equivalent to its examination.

(Code 1950, § 54-260.70; Code 1950, §§ 54-260.22 through 54-260.30, 54-260.32; 1956, c. 220; 1966, c. 284, § 54-260.70; 1972, c. 797; 1973, c. 296; 1974, c. 686; 1978, c. 849; 1986, c. 43; 1988, c. 765; 2000, c. 773.)

#### **§ 54.1-2814.1. Registration as a cremator.**

A. No crematorium, cemeterian, memorial society, or other establishment, organization, or person shall cremate a dead human body without having registered with the Board as a cremator.

B. The Board shall prescribe the procedures for registration under this section. Such procedures shall include a requirement that any crematory registered with the Board that engages in the practice of funeral services operate in compliance with the provisions § 54.1-2810. However, nothing in this subsection shall require a crematory registered with the Board to obtain a license as a funeral service establishment as long as the crematory provides cremation services directly to or for a licensed funeral service establishment only and not to the general public.

C. The Board may suspend or revoke any crematory registration or deny any application for such registration, or refuse to issue or renew any such registration, if the Board finds that the applicant or registrant has violated any provision of this chapter, the Board's regulations, or if the Board finds the crematory has operated or is operating in a manner that endangers the health, safety or welfare of the public.

(2000, c. 773; 2003, c. 505.)

#### **§ 54.1-2815. Application for license; how license signed; duration.**

All applications for examination for a license for the practice of funeral service shall be upon forms furnished by the Board.

All licenses shall be signed by the president and secretary of the Board and stamped with the seal of the Board.

All licenses shall be issued or renewed for a period prescribed by the Board, not exceeding two years.

(1978, c. 849, § 54-260.70:1; 1988, c. 765.)

#### **§ 54.1-2816. License renewal; failure to return renewal form.**

Prior to the expiration of a license, the Board shall provide to each person licensed to practice funeral service, embalming, or funeral directing a renewal notice and application to be submitted

to the Board together with the prescribed fee. Upon request, the Board shall provide renewal notices by mail to any licensee. The license of any person who does not submit the completed form prior to the date of expiration shall automatically expire. The Board shall immediately notify the person of the expiration and the reinstatement requirements. The Board shall reinstate an expired license upon receipt, within 30 days of the notice of expiration, of the completed form and the prescribed fee. Reinstatement after the 30-day period shall be at the discretion of the Board.

(1978, c. 849, § 54-260.70:2; 1988, c. 765; 2005, c. 477.)

**§ 54.1-2816.1. Continuing education requirements; promulgation of regulations.**

A. The Board shall promulgate regulations governing continuing education requirements for funeral services licensees, funeral directors and embalmers licensed by the Board.

B. The Board shall approve criteria for continuing education courses, requiring no more than five hours per year, that are directly related to the respective license and scope of practice of funeral service licensees, funeral directors and embalmers. Approved continuing education courses shall emphasize, but not be limited to, compliance with laws and regulations governing the profession. Course providers may be required to register continuing education courses with the Board pursuant to Board regulations. The Board shall not allow continuing education credit for courses where the principal purpose of the course is to promote, sell or offer goods, products or services to funeral homes.

C. All course providers shall furnish written certification to licensees of the Board attending and completing respective courses, indicating the satisfactory completion of an approved continuing education course. Each course provider shall retain records of all persons attending and those persons satisfactorily completing such continuing education courses for a period of two years following each course. Applicants for renewal or reinstatement of licenses issued pursuant to this article shall retain for a period of two years the written certification issued by any Board-approved provider of continuing education courses. The Board may require course providers or licensees to submit copies of such records or certification, as it deems necessary, to ensure compliance with continuing education requirements.

D. The Board shall have the authority to grant exemptions or waivers in cases of certified illness or undue hardship.

E. The Board may provide for an inactive status for those licensees who do not practice in Virginia. The Board may adopt regulations reducing or waiving continuing education requirements for any licensee granted such inactive status. However, no licensee granted inactive status may have their license changed to active status without first obtaining additional continuing education hours as may be determined by the Board. No person or registrant shall practice in Virginia as an embalmer, funeral director, or funeral service licensee unless he holds a current, active license.

(2002, c. 270.)

#### **§ 54.1-2817. Resident trainees.**

A person desiring to become a resident trainee shall apply on a form provided by the Board. The applicant shall attest that he holds a high school diploma or its equivalent. The Board, in its discretion, may approve an application to be a resident trainee for an individual convicted of a felony, if he has successfully fulfilled all conditions of sentencing, been pardoned, or has had his civil rights restored. The Board shall not, however, approve an application to be a resident trainee for any person convicted of embezzlement or of violating subsection B of § 18.2-126.

The Board, in its discretion, may refuse to approve an application to be a resident trainee for an individual who has a criminal or disciplinary proceeding pending against him in any jurisdiction in the United States.

When the Board is satisfied as to the qualifications of an applicant, it shall issue a certificate of resident traineeship. When a resident trainee wishes to receive in-service training from a person licensed for the practice of funeral service, a request shall be submitted to the Board. If such permission is granted and the resident trainee later leaves the proctorship of the licensee whose service has been entered, the licensee shall give the resident trainee an affidavit showing the length of time served with him. The affidavit shall be filed with the Board and made a matter of record in that office. Any resident trainee seeking permission to continue in-service training shall submit a request to the Board.

A certificate of resident traineeship shall be renewable as prescribed by the Board. The Board shall mail at such time as it may prescribe by regulation, to each registered resident trainee at his last known address, a notice that the renewal fee is due and that, if not paid by the prescribed time, a penalty fee shall be due in addition to the renewal fee.

The registration of any resident trainee who is in the active military service of the United States may, at the discretion of the Board, be held in abeyance for the duration of his service. The Board may also waive the renewal fees for such military personnel.

All registered resident trainees shall report to the Board at least every six months upon forms provided by the Board, showing the work which has been completed during the preceding six months of resident traineeship. The data contained in the report shall be certified as correct by the person licensed for the practice of funeral service under whom he has served during this period and by the person licensed for the practice of funeral service owning or managing the funeral service establishment.

Before such resident trainee becomes eligible to be examined for the practice of funeral service, evidence shall be presented along with an affidavit from any licensee under whom the trainee worked showing that the trainee has assisted in embalming at least 25 bodies and that the trainee has assisted in conducting at least 25 funerals. In all applications of resident trainees for licenses for the practice of funeral service, the eligibility of the applicant shall be determined by the records filed with the Board. The successful completion by any person of the resident traineeship shall not entitle him to any privilege except to be examined for such license.

Credit shall not be allowed for any period of resident traineeship that has been completed more than three years prior to application for license or more than five years prior to examination for license. If all requirements for licensure are not completed within five years of initial application, the Board may deny an additional traineeship. A resident trainee may continue to practice for up to 90 days from the completion of his traineeship or until he has taken and received the results of all examinations required by the Board. However, the Board may waive such limitation for any person in the armed service of the United States when application for the waiver is made in writing within six months of leaving service or if the Board determines that enforcement of the limitation will create an unreasonable hardship.

The Board shall have power to suspend or revoke a certificate of resident traineeship for violation of any provision of this chapter.

No more than two resident trainees shall be concurrently registered under any one person licensed for the practice of funeral service, funeral directing or embalming. Each sponsor for a registered resident trainee must be actively employed by a funeral establishment.

(Code 1950, §§ 54-260.34 through 54-260.38; 1956, c. 220; 1970, c. 513, § 54-260.72; 1972, c. 797; 1973, c. 296; 1974, c. 157; 1978, c. 849; 1981, c. 258; 1986, c. 43; 1988, c. 765; 2005, c. 477.)

#### **§ 54.1-2818. Registration and display of licenses.**

A copy of all licenses shall be displayed in a conspicuous place in each establishment in which the licensee practices.

(Code 1950, § 54-260.31; 1956, c. 220; 1972, c. 797, § 54-260.71; 1988, c. 765.)

##### **§ 54.1-2818.1. Prerequisites for cremation.**

No dead human body shall be cremated without (i) permission of the medical examiner as required by § 32.1-284 and either (ii) visual identification of the deceased by the next-of-kin or his representative, who may be any person designated to make arrangements for the decedent's burial or the disposition of his remains pursuant to § 54.1-2825 or an agent named in an advance directive pursuant to § 54.1-2984 or (iii) a twenty-four-hour waiting period between the time of death and the cremation.

(1998, c. 867.)

##### **§ 54.1-2818.2. Inapplicability to officers of state and local institutions.**

Nothing in this article shall be applicable to any officer of any institution operated by the Commonwealth or by any county, city or town in the performance of his duties as such.

(1998, c. 867.)



**§ 54.1-2818.3. Applications for registration required.**

Any crematory shall apply for and receive a registration from the Board as a registered crematory. However, this section shall not supersede or restrict the provisions of § 54.1-2814.1.

(1998, c. 867; 2003, c. 505.)

**§ 54.1-2819. Registration of surface transportation and removal services.**

Any person, private business or funeral service establishment, except a common carrier engaged in interstate commerce, the Commonwealth and its agencies, shall apply for and receive a registration as a transportation and removal service in order to be authorized to engage in the business of surface transportation or removal of dead human bodies in this Commonwealth.

Surface transportation and removal services shall not arrange or conduct funerals, provide for the care or preparation, including embalming, of dead human bodies, or sell or provide funeral-related goods and services without the issuance of a funeral service establishment license.

The Board of Funeral Directors and Embalmers shall promulgate regulations for such registration including proper procedures in the handling of all dead human bodies being transported, application process for registration, and establishment of registration fees. These regulations shall not require the use of a casket for transportation. Any licensed funeral service establishment shall receive such registration as part of its funeral service establishment license without the necessity of additional application or fee. However, such establishment shall be subject to the regulations pertaining to transportation and removal services.

All registrations as a surface transportation and removal service shall be renewed annually and no person, private business or funeral service establishment shall engage in the business as a surface transportation and removal service without holding a valid registration.

Any surface transportation or removal service which is not registered or persons who knowingly engage in transportation or removal services without registration shall be subject to the disciplinary actions provided in this chapter.

This section shall not be construed to prohibit private individuals from transporting or removing the remains of deceased family members and relatives either by preference or in observation of religious beliefs and customs.

(1984, c. 761, § 54-260.74:1; 1986, c. 198; 1988, c. 765.)

**§ 54.1-2820. Requirements of preneed funeral contracts.**

A. It shall be unlawful for any person residing or doing business within this Commonwealth, to make, either directly or indirectly by any means, a preneed funeral contract unless the contract:

1. Is made on forms prescribed by the Board and is written in clear, understandable language and printed in easy-to-read type, size and style;
2. Identifies the seller, seller's license number and contract buyer and the person for whom the contract is purchased if other than the contract buyer;
3. Contains a complete description of the supplies or services purchased;
4. Clearly discloses whether the price of the supplies and services purchased is guaranteed;
5. States if funds are required to be trusted pursuant to § 54.1-2822, the amount to be trusted, the name of the trustee, the disposition of the interest, the fees, expenses and taxes which may be deducted from the interest and a statement of the buyer's responsibility for taxes owed on the interest;
6. Contains the name, address and telephone number of the Board and lists the Board as the regulatory agency which handles consumer complaints;
7. Provides that any person who makes payment under the contract may terminate the agreement at any time prior to the furnishing of the services or supplies contracted for except as provided pursuant to subsection B; if the purchaser terminates the contract within 30 days of execution, the purchaser shall be refunded all consideration paid or delivered, together with any interest or income accrued thereon; if the purchaser terminates the contract after 30 days, the purchaser shall be refunded any amounts required to be deposited under § 54.1-2822, together with any interest or income accrued thereon;
8. Provides that if the particular supplies and services specified in the contract are unavailable at the time of delivery, the seller shall be required to furnish supplies and services similar in style and at least equal in quality of material and workmanship and the representative of the deceased shall have the right to choose the supplies or services to be substituted;
9. Discloses any penalties or restrictions, including but not limited to geographic restrictions or the inability of the provider to perform, on the delivery of merchandise, services or prearrangement guarantee; and
10. Complies with all disclosure requirements imposed by the Board.

If the contract seller will not be furnishing the supplies and services to the purchaser, the contract seller must attach to the preneed funeral contract a copy of the seller's agreement with the provider.

B. Subject to the requirements of § 54.1-2822, a preneed funeral contract may provide for an irrevocable trust or an amount in an irrevocable trust that is specifically identified as available exclusively for funeral or burial expenses, where:

1. A person irrevocably contracts for funeral goods and services, such person funds the contract by prepaying for the goods and services, and the funeral provider residing or doing business within the Commonwealth subsequently places the funds in a trust; or

2. A person establishes an irrevocable trust naming the funeral provider as the beneficiary; however, such person shall have the right to change the beneficiary to another funeral provider pursuant to § 54.1-2822.

C. If a life insurance or annuity contract is used to fund the preneed funeral contract, the life insurance or annuity contract shall provide either that the face value thereof shall be adjusted annually by a factor equal to the Consumer Price Index as published by the Office of Management and Budget of the United States, or a benefit payable at death under such contract that will equal or exceed the sum of all premiums paid for such contract plus interest or dividends, which for the first 15 years shall be compounded annually at a rate of at least five percent. In any event, interest or dividends shall continue to be paid after 15 years. In addition, the following must also be disclosed as prescribed by the Board:

1. The fact that a life insurance policy or annuity contract is involved or being used to fund the preneed contract;

2. The nature of the relationship among the soliciting agent, the provider of the supplies or services, the prearranger and the insurer;

3. The relationship of the life insurance policy or annuity contract to the funding of the preneed contract and the nature and existence of any guarantees relating to the preneed contract; and

4. The impact on the preneed contract of (i) any changes in the life insurance policy or annuity contract including but not limited to changes in the assignment, beneficiary designation or use of the proceeds, (ii) any penalties to be incurred by the policyholder as a result of failure to make premium payments, (iii) any penalties to be incurred or moneys to be received as a result of cancellation or surrender of the life insurance policy or annuity contract, and (iv) all relevant information concerning what occurs and whether any entitlements or obligations arise if there is a difference between the proceeds of the life insurance policy or annuity contract and the amount actually needed to fund the preneed contract.

D. When the consideration consists in whole or in part of any real estate, the contract shall be recorded as an attachment to the deed whereby such real estate is conveyed, and the deed shall be recorded in the clerk's office of the circuit court of the city or county in which the real estate being conveyed is located.

E. If any funeral supplies are sold and delivered prior to the death of the subject for whom they are provided, and the seller or any legal entity in which he or a member of his family has an interest thereafter stores these supplies, the risk of loss or damage shall be upon the seller during such period of storage.

(1989, c. 684; 1991, c. 721; 1992, c. 635; 1998, c. 738; 1999, c. 819; 2003, cc. 663, 673.)

**§ 54.1-2821. Exemptions.**

This article shall not apply to the preneed sale of cemetery services or supplies regulated under Chapter 23.1 (§ 54.1-2310 et seq.) of this title.

(1989, c. 684.)

**§ 54.1-2822. Deposit of money received pursuant to preneed funeral contract.**

Within thirty days following the receipt of any money paid pursuant to any preneed funeral contract or interest or income accrued thereon, unless such amounts are paid to fund either an annuity or an insurance policy which will be used to purchase the funeral supplies or services contracted for, the person receiving such amounts shall deposit all consideration paid pursuant to the terms of a preneed funeral contract in which the price of the supplies and services is not guaranteed, or ninety percent of all consideration paid pursuant to the terms of a preneed funeral contract in which the price of the supplies and services is guaranteed, in a special account in a bank or savings institution doing business in this Commonwealth.

The funds shall be deposited in separate, identifiable trust accounts setting forth the names of the depositor, the trustee for the person who is the subject of the contract, the name of the person who will render the funeral services and the name of the person who is the subject of the contract. The purchaser shall have the right to change the beneficiary and trustee of the trust at any time prior to the furnishing of the services or supplies contracted for under the preneed funeral contract. Trust account records shall be subject to examination by the Board.

No funeral director, embalmer, funeral service licensee, owner of a funeral establishment, or any person employed by or having an interest in a funeral establishment shall serve as trustee of a trust account for which any such person, or any funeral establishment owned by or employing such person or in which such person has an interest, has been named the beneficiary or designated the provider of services, unless two or more such persons are named and serve as trustees and are required to act jointly in such fiduciary capacity.

(1989, c. 684; 1992, c. 337.)

**§ 54.1-2822.1. Funeral establishments to maintain preneed records.**

Every person selling preneed funeral contracts within this Commonwealth shall keep and maintain such records of preneed transactions, including copies of preneed contracts, as may be prescribed by the Board. All such records shall be maintained on the premises of the funeral establishment providing the preneed services and supplies, except that preneed records of funeral establishments under common ownership, control, or management may be maintained at a single location within this Commonwealth.

(1995, c. 26.)

**§ 54.1-2823. Exemption from levy, garnishment and distress.**

Any money, personal property or real property paid, delivered or conveyed subject to § 54.1-2822 shall be exempt from levy, garnishment or distress.

(1989, c. 684.)

**§ 54.1-2824. Declaration of trust in consideration other than money.**

Within thirty days following the receipt of any personal property other than money delivered pursuant to any preneed funeral contract, the person receiving it, if title thereto is transferred, or the person making such delivery, if title thereto is not transferred, shall execute in writing a declaration of trust setting forth all the terms, conditions and considerations upon which the personal property is delivered, which shall be acknowledged in the same manner as the contract and recorded in the clerk's office of the circuit court of the city or county in which the person delivering the personal property resides; provided, that if such terms, conditions and considerations are contained in the preneed funeral contract, the contract shall be recorded.

(1989, c. 684.)

**§ 54.1-2825. Person to make arrangements for disposition of remains.**

Any person may designate in a signed and notarized writing, which has been accepted in writing by the person so designated, an individual who shall make arrangements for his burial or the disposition of his remains, including cremation, upon his death.

(1989, c. 684; 1998, c. 718.)